

Nos. 85-1329 and 85-6207

Supreme Court, U.S.

FILED

SEP 8 1986

JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1986

GERALD J. YOUNG, GEORGE CARISTE, SOL N. KLAYMINC,
and NATHAN HELFAND, PETITIONERS

v.

U.S.A., *ex rel.*
VUITTON ET FILS S.A., ET AL., RESPONDENTS

BARRY DEAN KLAYMINC, PETITIONER

v.

U.S.A., *ex rel.*
VUITTON ET FILS S.A., ET AL., RESPONDENTS

On Writs of Certiorari to the United States
Court of Appeals for the Second Circuit

JOINT APPENDIX

JAMES A. COHEN
WASHINGTON SQUARE LEGAL
SERVICES, INC.
715 Broadway, 4th Floor
New York, NY 10003
(212) 505-7400
Counsel for Petitioner
Barry Dean Klayminc

J. JOSEPH BAINTON
RCBOUL, MACMURRAY, HEWITT,
MAYNARD & KRISTOL
45 Rockefeller Plaza
New York, NY 10020
(212) 841-5700
Counsel for Respondent

(Additional Counsel Listed on Inside Cover)

PETITION FOR CERTIORARI FILED IN 85-1329 FEBRUARY 6, 1986
PETITION FOR CERTIORARI FILED IN 85-6207 JANUARY 16, 1986
CERTIORARI GRANTED JUNE 23, 1986

172172

LEONARD J. COMDEN
WASSERMAN, COMDEN & CASSELMAN
5567 Reseda Blvd.
Suite 330
Tarzana, CA 91356
(818) 705-6800
Counsel for Petitioner
Gerald Young

MITCHEL B. CRANER
666 Fifth Avenue
13th Floor
New York, NY 10103
(212) 757-9350
Counsel for Petitioner
George Cariste

WILLIAM WEININGER
845 Third Avenue
New York, NY 10022
(212) 308-3767
Counsel for Petitioner
Sol Klayminc

THOMAS R. MATARAZZO
4009 Fifth Avenue
Brooklyn, NY 11232
(718) 853-4040
Counsel for Petitioner
Nathan Helfand

INDEX

	Page
Chronological List of Relevant Docket Entries	1
Article Published by THE WALL STREET JOURNAL on June 28, 1982	6
Complaint, <i>Sol Klayminc v. J. Joseph Bainton, et al.</i> (Index No. 15001/84), dated December 1982	10
"Note to Mel West", dated March 27, 1983 (Govern- ment Exhibit 169)	13
Affidavit of J. Joseph Bainton, sworn to March 30, 1983 [sans exhibits]	18
Order Appointing Counsel and Approving Certain In- vestigatory Measures, Lasker, J., dated March 31, 1983	27
Transcript of Telephone Conversation between Mel Weinberg and Sol Klayminc, April 1, 1983, pp. 7-49, 57-59 (Government Exhibit 1-T(c))	28
Transcript of Telephone Conversation between Mel Weinberg and Sol Klayminc, April 4, 1984, pp. 8-16, 22-23, (Government Exhibit 2-T)	48
Partial Transcript of Telephone Conversation between Gunnar Askelund and Sol Klayminc, recorded April 5, 1983, pp. 25, 49-51, 34-47, (The Conversation of April 5 Was Transcribed in a Version Edited by At- torney for Respondent, (Government Exhibit 6A- ET), and Pages From An Unedited Version, (pp. 49- 51), Which Continue the Conversation Which Termi- nates at p. 25 of the Edited Transcript, (Defendant's Trial Exhibit H))	53
Transcript of Proceeding before Judge Briant, April 6, 1983	60
Letter from J. Joseph Bainton to Assistant United States Attorney Lawrence Pedowitz, dated April 6, 1983	64
Transcript of Telephone Conversation between Mel Weinberg and Sylvia Klayminc, April 8, 1983, pp. 7- 24, (Defense Exhibit E-1)	65

INDEX—Continued

	Page
Transcript of Audiotape of Conversation between Mel Weinberg and Sol Klayminc, recorded April 9, 1983, pp. 28-34, (Government Exhibit 19-T)	74
Transcript of Conversation between Mel Weinberg and Barry Klayminc, April 12, 1983, pp. 9-29, (Government Exhibit 30-T)	78
Letter from J. Joseph Bainton to John Kildebeck, Esq., dated April 13, 1983	88
Partial Transcript of Video Tape of Conversation between Sol Klayminc, Gerald Young and Mel Weinberg, recorded April 14, 1984, pp. 32-33, 40-43, Was Transcribed in a Version Edited by Attorney for Respondent (Government Exhibit 105-ET) and Pages from an Unedited Version (pp. 40-43) Continue the Conversation Which Terminates at p. 43 of the Edited Transcript, (Defendant's Exhibit I)	90
Partial Transcript from Taped Meeting Between Mel Weinberg, Gunnar Askelund, Dave Rochman and Sol Klayminc, April 14, 1983, pp. 155-160 (Defense Exhibit J)	93
Transcript of Audio Tape of Conversation between Mel Weinberg and Sol Klayminc, recorded April 17, 1983, pp. 7-11, (Government Exhibit 42-T)	96
Affidavit of J. Joseph Bainton sworn to April 26, 1983 in Support of Order To Show Cause, dated April 26, 1983	99
Letter from J. Joseph Bainton to Lorin Duckman, Esq. [plea agreement], dated May 7, 1983	103
Letter from J. Joseph Bainton to Lorin Duckman, Esq. [Vuitton release], dated May 7, 1983	106
Complaint to Determine Dischargeability of Debts and Objections to Discharge of Defendants, United States Bankruptcy Court for the Southern District of Florida, dated November 1, 1983	108

INDEX—Continued

	Page
Notices of Deposition and First Request for Production of Documents of Vuitton Et Fils, S.A. to Sol Klayminc and Sylvia Klayminc, United States Bankruptcy Court for the Southern District of Florida, November 1, 1983	118
Notice of Motion for Summary Judgment of Civil Contempt with Affidavits of J. Joseph Bainton and Brian Dowd, dated June 20, 1984	124
Transcript of Sentencing Proceeding before Judge Brieant, February 27, 1985	131
Order of the Supreme Court of the United States granting certiorari in 85-1329, June 23, 1986	165
Order of the Supreme Court of the United States granting certiorari and leave to proceed in forma pauperis in 85-6207, June 23, 1986	166

The opinions of the court of appeals and of the district court are printed in the appendix to the petition for a writ of certiorari in No. 85-1329 and have not been reproduced here.



CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

- March 31, 1983—Order Appointing Counsel and Approving Certain Investigatory Measures, Lasker, J. filed.
- April 26, 1983—Order to Show Cause why Sol N. Klayminc, Barry Dean Klayminc, Gerald J. Young, David Rochman, Robert G. Pariseault and Nathan Helfand should not be held in criminal contempt filed.
- July 11, 1983—Motion filed for severance of defendant Rochman.
- July 11, 1983—Motion filed to dismiss Order to Show Cause.
- July 11, 1983—Motion filed to transfer case for trial.
- July 15, 1983—Notice of Motion for an Order dismissing the Order to Show Cause as to additional alleged contemnor George Cariste upon the ground and for the reason that said Order to Show Cause dated April 29, 1983 is without sufficient cause and affidavit in support filed by attorney for Cariste (filed in 78 Civ. 5863 CLB).
- July 15, 1983—Search Warrant to search Criminal Contemnors Barry Dean Klayminc, et al., filed.
- August 12, 1983—Notice of Motion for an Order revoking appointment of the Special Prosecutor and dismissing the Order to Show Cause filed by attorney for Barry Dean Klayminc.
- August 15, 1983—Notice of Motion for an Order revoking appointment of Joseph Bainton and Robert Devlin and the law firm of Reboul, MacMurray, Hewitt, Maynard & Kristol as Special Prosecutors, dismissing the Order to Show Cause and suppressing all tapes, documents, recordings, etc., filed by defendant Klayminc.
- August 15, 1983—Affidavit of attorney Thomas Matarazzo in support of the motion of additional contemnor Helfand for an Order Dismissing the Order to Show Cause.

- September 2, 1983—Memorandum of Law in support of alleged contemnors' motion to revoke the appointment of the special prosecution and dismiss the Order to Show Cause filed by attorney for Klayminc, additional alleged contemnor.
- September 7, 1983—Memorandum of Law in support of defendant and alleged criminal contemnor Robert G. Pariseault's motion for an order revoking the special prosecutor's appointment, dismissing the Order to Show Cause, and suppressing all physical evidence.
- September 30, 1983—Memo of the Government in Opposition to Various Pre-Trial Motions by alleged criminal contemnors, and Appendix volumes #1 and #2, filed.
- October 24, 1983—Reply to Memo of the Government in Opposition to various Pretrial Motions by alleged criminal contemnors filed by defendant Barry Klayminc.
- October 27, 1983—Filed Response to Government's Opposition to Motion to dismiss by Defendant David Rochman.
- January 4, 1984—Filed Notice of Motion for an Order Dismissing the Order to Show Cause for failure to present the subject matter to the grand jury by Attorney for Barry Klayminc.
- January 23, 1984—Filed Memorandum of Law submitted by the government in opposition to defendant Barry Klayminc's application for an order dismissing charges against him.
- March 7, 1984—Filed letter to Judge Brieant requesting the removal of special prosecutors Bainton and Devlin, from James A. Cohen.
- May 29, 1984—Filed memo of the Govt Addressed to the Extraterritorial application of the Permanent injunction from which this action arises.
- May 29, 1984—Filed letter to Judge Brieant from James A. Cohen to begin trial on May 15 or 16.
- May 29, 1984—Filed letters dated May 4 and May 7, 1984 to Judge Brieant from William Weininger for Klayminc requesting that certain comments be raised.

May 29, 1984—Endorsements on the back of Order to Show Cause dated 5-4-84; JAN 13, 1983: Speedy trial act excluded because of the Co-Defendants 6-13-83 . . . Defendants Klayminc, Pariseault, present, plead not guilty, ROR, Sp time stopped, Motions Ret. 9-12-83 at 4 P.M. . . . 5-10-84 Defendant Pariseault Motion for adjourn trial as to him is granted to the extent that he is severed because of the fact that he has to obtain new counsel . . . 5-14-84 Defendants Klayminc, Young and Helfand appear . . . testimony begins and Government's case goes forward as to those present on criminal contempt of court . . . 5-15-84 Trial Cont'd Govt's case resumes . . . 5-16-84 Trial Cont'd Govt's case resumes . . . 5-17-84 Trial Cont'd Govt's case resumes . . . 5-18-84 Trial Cont'd Govt's case resumes . . . 5-21-84 Trial Cont'd Defendant Cariste's motions to dismiss are denied. . . . 5-22-84 Trial Cont'd . . . 5-23-84 Trial cont'd . . . 5-24-84 Trial Cont'd Jury returns and resumes its deliberation and returns verdict of guilty as to defendants Klayminc, Cariste, Young, Helfand, Mather, P.S.I. for all defendants . . . Klayminc, Helfand, Cariste sentence adjourned to 7-30-84 Young's sentence adjourned to 9-4-84. All defendants ROR, BAIL LIMITS INCLUDE continental U.S.A. Trial concluded, Jury Discharged, BRIEANT J.

June 6, 1984—Letter to Judge Brieant from Attorney James Cohen explaining that he attempts to do the following: (1) the motion for a judgment of acquittal pursuant to Rule 29(c) of the F.R.C.P. will be made . . . (2) A motion to dismiss for the due process violations

July 23, 1984—Filed Notice of Motion that Alleged Contemnor Gerald J. Young moves for an Order Dismissing the Order to Show Cause re Contempt issued by the Court on April 29, 1983 as it applies to Gerald Young. (Sent to Brieant Chambers)

August 1, 1984—Filed Notice of Motion by Gerald J. Young for a Judgment of Acquittal as to the charges of Criminal Contempt. (Sent to Brieant Chambers)

August 3, 1984—Filed Defendant Barry Klayminc's Memorandum of Law in support of motion to set aside the Jury Verdict and to dismiss the Order to Show Cause and/or hold a due process hearing. (Sent to Brieant Chambers)

August 17, 1984—Filed Notice of Motion by Contemnor George Cariste for an Order of Acquittal (Sent to Judge Briant's Chambers)

Sept. 11, 1984—Filed Memo Endorsed on Order to Show Cause dated from 5-4-84 . . . Defendant Pariseault appears (Attorney John A. O'Neill Jr. present) Defendant withdraws his plea of not guilty and enters a plea of guilty and is sentenced. Briant, J.

September 11, 1984—*USA v. Robert J. Pariseault*: Filed Judgment: Imposition of sentence is suspended and defendant is placed on probation for a period of six (6) months, subject to the standing probation order of this Court. So ordered Briant J. dated 9-11-84.

September 12, 1984—Filed Affidavit of Leonard J. Comden and Points and Authorities in Opposition to Plaintiff's Motion for Summary Judgment.

October 5, 1984—Filed Request to Take Judicial Notice submitted by J. Joseph Bainton.

October 5, 1984—Filed Memo of Law of the Government in Opposition to Various Post-Trial Motions of the Defendants.

October 29, 1984—Filed Letter to Judge Briant from Sol Klaymenc expressing his lack of funds, inability to represent himself, and request for a public defender. (Sent to Briant's chambers)

November 30, 1984—Filed Memorandum of the Government in Opposition to Defendant Barry Klaymenc's Post-Trial Motions.

January 23, 1985—Filed Notice of Motion by Sol Klaymenc of an Order of Acquittal . . . and for an Order to Dismiss the Order to Show Cause dated from 8-3-84.

January 23, 1985—Filed Memorandum of the Government in Opposition to Defendant Barry Klaymenc's Post Trial Motions.

January 24, 1985—Filed Memorandum and Order: . . . These criminal cases arise out of the sales of counterfeit Louis Vuitton products and the campaign waged by Vuitton to protect its trademark and profits . . . This court conducted a nine day trial which concluded on May 24, 1984. The trial

jury returned verdicts of guilty against defendants Sol Klayminc, Barry Klayminc, Gerald Young, George Cariste and Nathan Helfand. All defendants now move the Court to set aside the verdicts . . . All the defendants' motions are denied. The parties shall appear on March 1, 1985 for imposition of sentence . . . So ordered Brieant, J. dated 1-24-85.

Feb. 27, 1985—Defendant Sol Klayminc appears (Atty. William Weininger present) is sentenced. FIVE YEARS, advised of right to appeal, ROR pending appeal.

Feb. 27, 1985—Defendant Barry Klayminc appears (Atty. James Cohen present) is sentenced to NINE YEARS, (sic) (should be months) advised of right to appeal, ROR pend appeal.

Feb. 27, 1985—Defendant Young appears (Atty. Leonard Comden present) and is sentenced to TWO and ONE-HALF YEARS, advised of right to appeal, ROR.

Feb. 27, 1985—Defendant Cariste appears (Atty. Mitchell Craner present) and is sentenced to NINE MONTHS advised of right to appeal and is ROR.

March 27, 1985—*USA, ex rel VUITTON ET FILE & LOUIS VUITTON, S.A. VS GERALD J. YOUNG & GEORGE CARISTE*: Filed NOTICE TO THE DOCKET CLERK THAT RECORD ON APPEAL HAS BEEN CERTIFIED & TRANSMITTED TO THE U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT on 3-27-85.

March 28, 1985—*U.S.A. ex rel VUITTON ET FILS, S.A. and LOUIS VUITTON, S.A. VS SOL N. KLAYMINC*: Filed FIRST SUPPL. RECORD from Notice to Docket Clerk, that record on appeal has been certified and transmitted to the US COURT OF APPEALS for the Second Circuit on 3-28-85.

April 1, 1985—*U.S.A., ex rel VUITTON ET FILS, S.A. & LOUIS VUITTON, SA VS BARRY KLAYMINC*: Filed 2nd SUPPL. RECORD from Notice to the Docket Clerk, that the record on appeal has been certified and transmitted to the U.S. Court of Appeals for the Second Circuit on 4-1-85.

MAKERS OF DESIGNER GOODS STARTING TO CRACK DOWN ON COUNTERFEITING

By DENNIS KNEALE

Staff Reporter of THE WALL STREET JOURNAL

NEW YORK—Designer jeans were what Leo Sterling sold. The labels said Gucci, Jordache, Calvin Klein and so on. The garments were counterfeit—cheap jeans emblazoned with fake labels—but it became a \$2.5 million business that brought the silver-haired Mr. Sterling a Rolls-Royce Silver Cloud and a \$150,000 salary.

It also brought him a federal court conviction and a seven-year prison sentence.

"People used to laugh at these cases," says Joseph Bainton, trademark attorney for Vuitton & Fils S.A. "Nobody's going to die from a counterfeit purse." A lawyer for Jordache Enterprises Inc. says, "A lot of people don't mind that they're wearing counterfeit goods. It's very frustrating."

The manufacturers mind. They are lobbying Congress for stiff federal penalties; a bill is scheduled for committee hearings next month. The manufacturers are beginning their own policing operations to catch fakers. And the courts are starting to pay attention; counterfeiters are winding up in jail or with severe fines.

White-Collar Crime

Trade "knockoffs," or counterfeiting, grew in the 1970s along with the craze for status-laden labels on apparel, shoes, luggage and jewelry. Today counterfeiting extends to toiletries, aircraft parts, motor oil, golf clubs and scores of other products, at an estimated cost to manufacturers of billions of dollars yearly.

But, oddly, label counterfeiting itself doesn't carry serious criminal penalties. Most states consider it a

misdeemeanor. Indeed, Mr. Sterling and eight associates at Designer Sportswear Inc., his firm, were convicted on charges of wire fraud, because they used the telephone in conducting their business.

The court papers outline a sophisticated operation that cheated more than 500 small retailers around the country. Bank officials were bribed to issue worthless checks, and merchants were paid off to provide credit references. Mr. Sterling's sales manager got a five-year prison sentence and his top salesman got three years.

Apparel makers are the manufacturers moving most aggressively against counterfeiters. Jordache, which has seized \$10 million worth of imitation jeans this year, placed a half-page ad in the Los Angeles Times recently about the Sterling conviction.

"It's to get the word out to the counterfeiter; if you've got even one pair of counterfeit Jordache jeans, you can expect to see me," says Martin Rube, the firm's Los Angeles attorney.

The manufacturers have begun undercover operations that sometimes have a Pink Panther flavor. A Jordache detective recently found—and bought—a pair of fake Jordache jeans at a small shop in the San Fernando Valley, U.S. marshals returned with a court-obtained seizure order—and found just one more pair of fake jeans.

Jordache threatened to sue anyway, and the shopowner provided the name of his supplier, Mr. Rube says.

The issuance of seizure orders by federal judges, a new development, began after an attorney simply asked a judge for one. The manufacturers also have persuaded federal judges to take an unusual step—appointing company attorneys as special prosecutors when counterfeiters continue operating after being ordered to stop.

Mr. Bainton of Vuitton, for instance, recently was appointed federal prosecutor here to try Sol N. Klayminc, who faced contempt charges in a luggage-counterfeiting operation.

The defendant, whom Mr. Bainton calls a "typical upper-middle-class garment type," was convicted and awaits sentencing. He could get up to six months in jail. Mr. Bainton is being asked for a sentencing recommendation, and he is urging jail time.

"Even if he doesn't get thrown in the hoosegow," the attorney says gleefully, "he was fingerprinted and photographed right next to the muggers and the mother-rapers. I'm sure that was an experience he'll remember."

Trademark attorneys aren't in agreement on whether fines or jail terms offer the most effective deterrent to counterfeiting. Most attorneys favor both. Some recent cases have provided satisfaction for all:

- A knockoff artist selling counterfeit rock-group T-shirts began serving a 60-day jail sentence on June 1 on conviction of contempt, after two years of appeals that were exhausted when the U.S. Supreme Court declined to hear his case.

- In Miami, a judge imposed a \$350,000 judgment against a counterfeiter of Playboy blouses.

- A federal judge in Chicago handed down the largest judgment ever in a trademark-counterfeit case, ordering a husband-and-wife T-shirt team to pay \$965,355 for counterfeiting more than 200,000 shirts and jerseys with rock-group designs.

"This was a record breaker," says Michael Roche, attorney for Winterland Concessions Co., which had exclusive rights to the rock-group labels. "We asked the judge to send out a message to this multimillion-dollar subculture—and that's what he did."

In Hot Pursuit

Getting salesmen for smaller retailers to name suppliers is a prime goal of companies. "If you're just constantly knocking off stores, all you're doing is clipping fingernails. We're after the wrist, elbow, up to the shoulder—the manufacturer," says Merritt Kanner. His

Kanner Security Group in Miami uses 10 undercover detectives, dummy corporations and false storefronts to lure counterfeiters. "We're conning the con men," he says.

It gets expensive. Calvin Klein spent \$1.5 million in 1981 (when profits were about \$11 million) combating counterfeiting, which costs the designer about \$20 million a year, its lawyer says. Jordache spends as much as \$500,000 annually for six full-time detectives and two attorneys.

Attorneys concede that most fines fail to cover companies' enforcement expenses. "Attorneys' fees in most cases outweigh the fine recovery," says Stanley Yavner, trademark counsel for Calvin Klein and other labels.

Designer firms are hoping the congressional bill, which would impose maximum five-year prison terms, personal fines of \$250,000 and corporate fines of \$1 million, will reverse that trend.

"I think what will happen is we're going to see more jail sentences and more counterfeiting fines," says James Bikoff, president of the International Anticounterfeiting Coalition, the business group that pushed the proposal. "The word will spread through the counterfeit trade that this is getting dangerous, fellas."

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

SOL KLAYMINC, PLAINTIFF

—against—

J. JOSEPH BAINTON and REBOUL MACMURRAY,
HEWITT, MAYNARD & KRISTOL,
a partnership, DEFENDANTS

COMPLAINT

Plaintiff, by his attorney, BRIAN FISHKIN, complaining of the defendants, alleges as follows:

AS AND FOR A FIRST CAUSE OF ACTION

FIRST: At all times hereinafter mentioned, the plaintiff, SOL KLAYMINC, was a resident of the State of New York, County of New York.

SECOND: Upon information and belief, at all times hereinafter mentioned, the defendant J. JOSEPH BAINTON was an attorney duly admitted to practice in the courts of the State of New York and a partner in the firm of REBOUL, MacMURRAY, HEWITT, MAYNARD & KRISTOL, with offices at 45 Rockefeller Plaza, New York, New York.

THIRD: At all times hereinafter mentioned, the plaintiff was the President and Chief Executive Officer of Karen Bags, Inc., a wholly owned corporation in the business of manufacturing ladies handbags and belts, which items are sold throughout the United States.

FOURTH: On or about the 28th day of June, 1982, at New York, New York, the defendant J. JOSEPH

BAINTON, in the presence and hearing of one Dennis Kneale and several others, maliciously spoke of and concerning the plaintiff in the following words:

"... [H]e was fingerprinted and photographed right next to the muggers and mother-rapers. I'm sure that was an experience he'll remember.

FIFTH: The words spoken about the plaintiff by the defendant J. JOSEPH BAINTON were false and defamatory.

SIXTH: The said words were spoken of and concerning the plaintiff with the intent and for the purpose of injuring the plaintiff in his reputation and business and were known at all times by the defendant J. JOSEPH BAINTON to be false.

SEVENTH: By reason of the statements, the plaintiff has been injured in his good name, character and reputation, and in his feelings, mind and body, and has been held up to ridicule and contempt by his friends, acquaintances, business associates and the public, all to his damage in the sum of \$2,000,000.00.

AS FOR THE SECOND CAUSE OF ACTION

EIGHTH: The plaintiff repeats and reiterates each and every allegation contained in paragraphs numbered "FIRST" through "SIXTH", inclusive, of this complaint as though fully set forth at length herein.

NINTH: By reason of the foregoing defamatory statement of and concerning the plaintiff, various firms, persons and corporations with whom the plaintiff had previously been doing business, including the J. C. Penney Co., Inc., thereafter refused to do business with the plaintiff, to his damage in the sum of \$250,000.00.

WHEREFORE, plaintiff demands judgment as follows: two million dollars (\$2,000,000.00) on the first cause of action; two hundred fifty thousand dollars

(\$250,000.00) on the second cause of action; together with attorney's fees, interest, costs and disbursements of this action.

BRIAN FISHKIN
Attorney for Plaintiff
116 John Street
New York, New York 10038

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NY

GOVERNMENT EXHIBIT 169

Pg. 1

3/27/83

Note To Mel West:

In Meeting With Saul Klayman The Following Is Proposed: Re: *Plant In Haiti*

1. Merchandise To Be Manufactured In Haiti, Ladies Handbags, The Leather And By Products For The Same Have To Be Purchased For Cash. Approximately 50% Cash Will Be Necessary, In Advance, To Pay For The Ingredients Leather, Fabric And By Products. This Amount Advanced Will Cover Payroll, Shipping, Cutting, And Start Up Expenses. Once The Plant Starts Operating, An Advance Of Only 25% Will Be Necessary To Continue The Operation. This Is Predicated On The Leather Bags Submitted.
2. In The Future When Other Items Are Starting To Be Produced In Haiti, The Fabric For Same Will Have To Be Paid For Up Front. On These Items A Savings Will Be Effectuated Of Approximately 25%.
3. At The Present Time We Are Operating Under A Franchise Owned By A Black Englishman Whose Firm Is Known As S.M.E., S.A., Whose Name Is Harry Daniels. This Individual Has A 25% Interest In My Business, Of Which I Own 50%. The Other 25% Is Owned By A Close Personal Friend Of Mine Who Is President Of United Thread Mills, Located In Rockville Center, L.I., N.Y., Whose Name Is Dave Henkus, Who Resides In Rockville Center, L.I., N.Y. The Approximate Total Cash And Machinery Invest-

ment, At This Time, Is Approximately \$100,000. We Have Pre-Paid Our Rent Through Dec. 1983.

/s/ Sol Klaymine

Pg. 2
Cont.

4. The Building The Plant Is Housed In Is A Butler Constructed Bldg. Comprising 21,000 Square Feet Including The Offices. My Firm Occupies Approximately 40% Of The Area.
5. The Owner Has Made It Known To Me That He Would Like To Vacate The Area He Is Utilizing, Which Is Used For Manufacturing Of Jeans, Etc., And Sell The Bldg., Which Is Approximately 21,000 Sq. Ft. At A Price Of \$10.00 A Foot.
6. The Deal Is Predicated On The Purchase Of The Equipment, Outside Of The Machinery, Such As Air Conditioners, Office Equipment, Electrical Fixtures, Etc. . . . , For A Negotiable Price Of \$30,000.00.
7. With The Present Setup In The Plant, I Can Produce Approximately 3500 Units A Week, Once The Production Has Started. With An Addition of Approximately \$25,000 Investment, For Machinery And Equipment, We Will Be Capable Of Doubling Our Production.
8. In Addition, To Apply For Our Own Charter—"Franchise"—To Use The Name "*Crystal, S.A.*", A Fee Of \$5000.00 Will Have To Be Advanced And Is Held In Escrow By The Authorities, Until Franchise Is Granted, At Which Time Money Held In Escrow Is Refunded,
9. The Other Two Investors Are Strictly Silent Partners,

These Papers Are Being Signed By Me With Full
Knowledge Of What Is Contained.

/s/ Sol Klaymine 3/27/83

To Purchase Cost Sheet 3/27/83

LV

1000 Pcs.	1. Satchel	\$25.00
750 Pcs.	2. Clutch W/Top Zipper	\$25.00
		\$11.00
750 Pcs.	3. Shopping Bag	\$28.00

Note: All Leather Bindings And Trimmings.

Gucci

750 Pcs.	500 Brown 250 Blue	1. Satchel W/Double Strap	\$30.00
750 Pcs.	500 Brown 250 Blue	2. Doctors Case	\$30.00
500 Pcs.	500 Brown 200 Blue	3. Large Camera Case	\$30.00
500 Pcs.	300 Brown 200 Blue	4. Small Camera Case	\$20.00

Note: All Trimmings To Be Genuine Leather.
Two Colors: Brown And Navy.

Note: On Gucci—Two Weeks Delivery On Requested Quantity

On Both of These Items, 25% To Be Pd-Up Front W/Sol Klayman, Of Total Order, And Balance To Be Given To Sol To Pay For Merchandise Upon Completion And His Satisfactory Examination Of Merchandise. All Merchandise Guaranteed. Defective Merchandise To Be Returned At Owners Expense.

3/27/83

Cost Sheet Of
Merchandise To Be Produced In Haiti

— 500 Units	#902 Leather Hobo	\$16.00
500 Units	#7855 Pouch Leather	\$16.00
500 Units	#7860 Leather Body Bag (Without Bow)	\$16.00
500 Units	#7843 Leather Covered Frame Bag (Without Welting)	\$16.00

Note: Wants 500 Units Of A Style To Start Up With
We Select Colors.

***Note: On Gucci Attache Case—For An Order Of 100 Pcs.—
Approximately \$95.00 A Unit With Delivery Of Said
Quantity Approximately 30 Days

Garment Bag To Be Made In Haiti

*****Note: Delivery Of LV's In New York Or New Jersey
Delivery Of Gucci In Miami

As Per Sol Klayman

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

78 Civ. 5863 (CLB)

UNITED STATES OF AMERICA, *ex rel.*,
VUITTON ET FILS S.A., and
LOUIS VUITTON, S.A., PLAINTIFFS

—against—

KAREN BAGS, INC., JADE HANDBAG CO., INC., SOL N.
KLAYMINC and JAK HANDBAG INC., DEFENDANTS AND
ALLEGED CRIMINAL CONTEMNORS

—and—

SYLVIA KLAYMINC, BARRY KLAMINC, JERRY ROTH, GEORGE
CARISTE, DAVID HENKUS, HENRY DANIELS, S.M.E.,
S.A., CRYSTAL, S.A., "JOHN DOES" NOS. 1 THROUGH
10, and "JANE DOES" NOS. 1 THROUGH 10, ADDITIONAL
ALLEGED CRIMINAL CONTEMNORS

AFFIDAVIT

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

J. JOSEPH BAINTON, being duly sworn, deposes and
says:

1. I am a member of the bar of this Court and a
member of the firm of Reboul, MacMurray, Hewitt,
Maynard & Kristol, attorneys for plaintiffs Vuitton et
Fils S.A., and Louis Vuitton S.A. (hereinafter collec-
tively referred to as "Vuitton"). Since 1978 I have been
the attorney in charge of efforts in the United States to
enforce Vuitton's rights in respect of its federally regis-

tered trademark No. 297,594. In that capacity, I have on prior occasions been specially appointed by this and other Courts to represent the United States of America in respect of the prosecution of alleged contempts of court orders prohibiting persons sued by Vuitton from infringing its registered trademark. My colleague, Robert P. Devlin, Esq., has likewise been involved for years with Vuitton's trademark enforcement campaign and has also previously been specially appointed by this Court to prosecute criminal contempt cases.

2. I make this affidavit in support of Vuitton's application for similar appointments and for the Court's permission for Mr. Devlin and me to cause to be conducted certain investigatory activities described below designed to prove beyond a reasonable doubt that alleged contemnor Sol Klaymine ("Sol"), his son, alleged contemnor Barry Klaymine ("Barry"), his wife, alleged contemnor Sylvia Klaymine ("Sylvia"), his companies, alleged contemnors Karen Bags, Inc. ("Karen"), Jade Handbag Co., Inc. ("Jade"), Jak Handbag Inc. ("Jak"), S.M.E., S.A. ("SME") and Crystal, S.A. ("Crystal"), his partners and co-conspirators, alleged contemnors Henry Daniels, Dave Henkus, George Cariste ("Cariste"), Jerry Roth ("Roth"), "John Does" Nos. 1 through 10, and "Jane Does" Nos. 1 through 10, whose identity is presently unknown, are engaged in an international conspiracy to violate orders of this and other federal district courts.

BACKGROUND OF THIS ACTION

3. On December 12, 1979, this Court entered a preliminary injunction restraining defendants from infringing Vuitton's registered trademark. It is undisputed that Sol and his family have at all relevant times been engaged in the manufacture and sale on a wholesale basis of ladies' handbags and accessories.

4. On July 8, 1981, this Court issued an order directing Karen, Jade, Sol, David Kasman, Leon Cohen, Sylvia

and Thelma "Doe" to show cause why they should not be cited for criminal contempt of the aforesaid preliminary injunction.

5. This Court ultimately referred the matter for trial as a misdemeanor before Magistrate Bernikow. That trial was delayed while Vuitton filed with the United States Court of Appeals for the Second Circuit a petition for writ of mandamus directing that the case be tried before the District Court as an offense other than a misdemeanor. That petition was denied.

6. Thereafter a trial was held before Magistrate Bernikow and Sol, Karen and Jade were convicted of criminal contempt.

7. Before sentencing, an agreement was reached to dispose of the defendants' civil liability both for civil contempt and the claims asserted in the complaint.¹ A written agreement was reached on July 13, 1982, which, in substance, provides for joint and civil liability among Sol, Sylvia, Barry, Jak, Karen and Jade to Vuitton for the sum of \$100,000 payable over 36 months, together with interest thereon at the rate of 16% per annum. Such payments were to be in equal monthly installments of \$3,540.44.

8. Payments for six months aggregating \$21,242.64 were made, and notwithstanding duly served notices of default by Vuitton pursuant to the aforesaid agreement no further payments have been made. Because of the developments discussed below no action has been taken by Vuitton in respect of these defaults.

9. Prior to sentencing, the civil settlement was disclosed *in camera* to Magistrate Bernikow, who in turn neither imposed fines on Jade, Karen or Sol nor a custodial sentence on Sol. Rather, the Court merely placed all of them on probation. A copy of the transcript of the sentencing hearing is annexed hereto as Exhibit A.

¹ Prosecution of the action had been informally stayed pending the decision of the Ninth Circuit in *Vuitton et Fils S.A. v. J. Young Enterprises, et al.*, 644 F.2d 769 (9th Cir. 1981).

10. The civil action was finally disposed of by the entry of a permanent injunction on July 30, 1982. A copy of that permanent injunction is annexed hereto as Exhibit B.

11. In December 1982, Sol commenced an action in the Supreme Court of the State of New York, County of New York, against me and my law firm seeking the recovery of \$2,250,000. A copy of the complaint is annexed hereto as Exhibit C.

THE FLORIDA "STING" OPERATION

12. During the early part of this year, Vuitton, Gucci Shops, Inc. ("Gucci"), Calvin Klein Jeans, and certain other owners of prestigious trademarks were contacted by Kanner Security Group, Inc. ("Kanner"), a Florida private investigatory firm. The principals of Kanner are all former FBI agents.

13. It was proposed to Vuitton and others that they share in the expense of operating a "sting" operation. In substance the sting involved operatives of Kanner posing as persons interested in trading in counterfeit trademarked wares on a large scale. That operation has provided and continues to provide information useful to all of the trademark owners participating in it. I shall limit this affidavit solely to the facts developed by this operation which bear on the present application.

14. Mr. Gunnar Askland ("Askland"), a former FBI agent, who I am informed worked on a large FBI investigation commonly known as "Abscam", has, on behalf of Kanner, been primarily responsible for the operation of this sting. He in turn engaged the services of Mr. Mel Weinberg ("Weinberg"), who, as the Court may recall, posed as the "financial adviser" to the "fake Sheik" in the Abscam operation.

15. In connection with this sting, Weinberg has used the fictitious name "Mel West" and Askland has used the fictitious name "Chris Anderson".

16. I am informed that during the course of their operation of this sting they made friends with a Nate Helfand ("Helfand"). Helfand is not aware of the true identities of Weinberg and Askland and perceives them to be persons either directly or tangentially affiliated with organized crime.

17. Through Helfand, who had been paid for his services and promised bigger things in the future, Weinberg and Askland have been able to make purchases of counterfeit articles, including counterfeit Vuitton articles from mid-level distributors and relatively small-time manufacturers.

18. Several weeks ago, Helfand brought to the attention of Askland and Weinberg an individual by the name of "Sol", who told Helfand that he (a) "had been burned by Louis Vuitton to the tune of \$100,000 in New York City", (b) was still in the business of selling counterfeit Vuitton wares and (c) was opening a large factory in Haiti. Sol is the only defendant in a Vuitton action who has never agreed or been ordered to pay the sum of \$100,000.

19. Helfand developed his relationship with Sol and discussed it with Askland and Weinberg. Askland and Weinberg told Helfand that if Sol had a proposal which they found interesting they had money to invest in it.

20. These conversations resulted in a dinner meeting in Florida on March 27, 1983, attended by Sol, Sylvia and Helfand. A copy of both sides of the American Express slip which Helfand used to pay for the dinner is annexed hereto as Exhibit D.

21. Helfand reported to Askland that the substance of the dinner discussion related to the sale by Sol of counterfeit Vuitton and Gucci wares and the possible investment by Helfand's "contacts" (Askland and Weinberg) in the Haiti factory.

22. Annexed hereto as Exhibit E is a memorandum hand written by Helfand and signed by Sol, which describes in some detail the present and proposed nature

of the operation of the Haitian factory. Also annexed as part of Exhibit E, are recent and one not so recent exemplar of Sol's signature. Comparison of these signatures on the Helfand-obtained document is genuine.

23. Helfand stated to Weinberg that during this dinner meeting, Sol said that "Haiti was a wonderful country. Unlike New York, where I have been busted by Vuitton twice, in Haiti once you establish good relations with the Government you can do anything you want."

24. At this meeting Sol delivered to Helfand, who in turn delivered to Askland, several counterfeit Vuitton articles. One of those articles was hand delivered to me on March 29, 1983, by L. Merritt Kanner, president of Kanner.

25. I have examined the article and represent to the Court that it is a counterfeit. I wish to remind the Court that on several occasions during trials in this Court I have been qualified as an "expert" competent to express such an opinion.

26. Sol also gave Helfand certain costing information which Helfand reduced to writing. A copy of Helfand's costing notes is annexed hereto as Exhibit F.

27. Sol told Helfand, who in turn told Askland, that certain Vuitton products could be picked up from a man named "George" in New Jersey. Based upon other litigation in the United States District Court for the Eastern District of Pennsylvania and based upon a telephone number provided by Sol to Helfand, and in turn provided by Helfand to Askland, we know George to be "George Cariste", who has been identified during pre-trial proceedings in other cases as a large supplier of counterfeit Vuitton merchandise throughout Pennsylvania and the Atlantic City area. He reportedly moves his factory every two weeks to avoid detection by Vuitton. Sol proposed that Helfand pay him for the counterfeit Vuitton merchandise and pick up the merchandise from Cariste.

28. Sol also proposed that counterfeit Gucci articles could be purchased from him, and picked up from one

Jerry Roth ("Roth") in South Florida. Roth is a party to the permanent injunction and final judgment in the case of *Vuitton et Fils S.A. v. J. Young Enterprises, Inc., et al.*, which, as this Court will recall, was twice litigated before the United States Court of Appeals for the Ninth Circuit. The final judgment entered by the United States District Court for the Central District of California provides for the recovery of \$750,000 by Vuitton jointly and severally from any defendant thereto in the event that, subsequent to entry of that judgment, Vuitton can prove any violation of that order by any party to it. Through other investigators we have recently purchased counterfeit Vuitton merchandise from Roth.

29. Helfand informed Askland that Sol had advised him that everyone who was working with him, including Roth and Cariste, were well aware of the permanent injunctions entered by this Court and other Courts expressly prohibiting the conduct in which they are presently engaged. In addition, all of the alleged contemnors know that the person with whom they are acting in concert and participation, Sol, has already once been convicted by this Court for criminal contempt of an order prohibiting the infringement of Vuitton's trademark.

30. Finally, Sol told Helfand, who in turn told Askland, that Barry has a 25% interest in his company. Other "silent partners" are alleged contemnors David Henkus ("Henkus") and Henry Daniels ("Daniels"). Henkus resides on Long Island. Daniels appears to reside in Haiti and his citizenship is presently unknown.

SPECIAL APPOINTMENT OF COUNSEL TO PROSECUTE APPARENT CRIMINAL CONTEMPT

31. For all of the foregoing reasons, it appears that probable cause exists to suspect that each of the above named alleged contemnors, and others whose identity is presently unknown, are engaged in a course of conduct criminally contumacious of this Court's final judgment

and permanent injunction entered July 30, 1982. Accordingly, upon the authority of *Musidor B.V. v. Great American Screen*, 658 F.2d 60, 64-65 (2d Cir. 1981), and also in light of the several similar prior appointments, Vuitton respectfully requests that the Court specially appoint J. Joseph Bainton, Esq., and Robert P. Devlin, Esq., members of the bar of this Court and attorneys with the firm of Reboul, MacMurray, Hewitt, Maynard & Kristol, to continue the investigation and, in due course, the prosecution of what appears to be a massive international conspiracy to violate this Court's permanent injunction.

PROPOSED INVESTIGATIVE PROCEDURES

32. As this Court has recognized previously, an attorney specially appointed to represent the United States in the context of a criminal contempt proceeding in a practical sense stands in somewhat different shoes than an Assistant United States Attorney. Perhaps out of an over-abundance of caution and in order to do all that is possible to avoid criticism later, I wish to advise the Court of certain steps that, with the Court's permission, if specially-appointed to represent the United States, we propose to take.

33. On the assumption that this application would be granted, preliminary arrangements have been made for a meeting among Sol, Barry, Askland and Weinberg at the Plaza Hotel in New York City, at noon on Tuesday, April 5, 1983. Arrangements have been made to rent a two bedroom suite. In a technical fashion similar to that employed in the Abscam operation, the meeting among those individuals will be videotaped so that at some later time there can be no question as to what was said to whom and by whom. We expect that Sol will repeat the highly incriminatory statements he made last week at dinner with Helfand and on other occasions over the telephone to Helfand when Weinberg and/or Askland were listening on different extensions of the telephone on which

Helfand was speaking. Sol has also been requested to bring to the meeting 25 of his better quality counterfeit Vuitton satchel purses, which he has been told Askland and Weinberg plan to give as gifts to female attendees at a party they are giving.

34. In this regard, I bring to the Court's attention A.B.A. Formal Opinion 337, dated August 10, 1974, which in a civil context states that it is unethical for an attorney to participate in the surreptitious recording of a conversation. There is no similar prohibition against a prosecutor knowingly condoning or arranging for such an event. *Lopez v. U.S.*, 373 U.S. 429 (1963); *U.S. v. White*, 401 U.S. 745 (1971).

35. For obvious reasons Vuitton requests that this affidavit and any order granting this application be filed and kept under seal pending further order of this Court.

Conclusion

36. For the foregoing reasons and in the interest of justice, Vuitton's applications should be granted in all respects.

/s/ J. Joseph Bainton
J. JOSEPH BAINTON

[Affidavit Omitted in Printing]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[Title Omitted in Printing]

**ORDER APPOINTING COUNSEL AND APPROVING
CERTAIN INVESTIGATORY MEASURES**

Upon the affidavit of J. Joseph Bainton, Esq., sworn to March 30, 1983, and upon all other prior proceedings heretofore had herein;

The Court finds that probable cause exists to believe that the above-named alleged criminal contemnors are knowingly engaged in a course of conduct criminally contumacious of this Court's final consent judgment and permanent injunction filed July 30, 1982, and accordingly it is hereby

ORDERED that J. Joseph Bainton, Esq., and Robert P. Devlin, Esq., members of the bar of this Court, are hereby specially appointed to represent the United States of America in connection with the further investigation of the alleged aforesaid criminally contumacious course of conduct and the ultimate prosecution therefor; and it is further

ORDERED that Messrs. Bainton and Devlin, in their capacity as specially appointed attorneys for the United States of America, may properly cause the investigation described in Mr. Bainton's March 30, 1983 affidavit to be conducted; and it is further

ORDERED that this order and Mr. Bainton's March 30 affidavit be filed and kept under seal pending further order of this Court.

Dated: New York, New York
March 31, 1983

/s/ [Illegible]
U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[Title Omitted in Printing]

TRANSCRIPT OF TELEPHONE CALL

Tape 1 (C)

4/1/83

* * * *

[7] MR. MEL WEINBERG: Right. Was that stuff that you want to keep?

MR. SOL KLAYMINC: Well, I—I could definitely make a profit from it.

MR. MEL WEINBERG: All right, so then we'll pay him off.

MR. SOL KLAYMINC: Well, I wouldn't rush into it, you know, but if—

MR. MEL WEINBERG: All right, well, you'll call the shots, all right?

MR. SOL KLAYMINC. Yeah. Yeah.

MR. MEL WEINBERG: Now, is there any way—because your—when are you going—did you file bankruptcy yet or you're just filing—?

MR. SOL KLAYMINC: No. My lawyer who's doing all this told me, "Don't rush. Let me advise you what to do." Now, I plan to call him when I get through with you and Nate today.

[8] MR. MEL WEINBERG: Well, what do you want to call him for?

MR. SOL KLAYMINC: I want to know what we should do. I'll bring him up to date on everything that's happening.

MR. MEL WEINBERG: Well, I wouldn't tell him too much. Let's get all this—

MR. SOL KLAYMINC: No, I won't tell him anything. No, I'll just tell him what's happening like the factory, a guy put a restraining order on it, and the factor lifted it, you know—I'll let him know this stuff and what he'd advise me to do, what—

MR. MEL WEINBERG: Oh. All right. The other thing, now, on the stuff you shipped out, right?

MR. SOL KLAYMINC: Yeah.

[9] MR. MEL WEINBERG: Okay, if you file Chapter XI, can they pick up on that?

MR. SOL KLAYMINC: No.

MR. MEL WEINBERG: You covered it?

MR. SOL KLAYMINC: Yes. I got it covered.

MR. MEL WEINBERG: You sure, now.

MR. SOL KLAYMINC: Yeah.

MR. MEL WEINBERG: All right. Two, you said that you formed another company.

MR. SOL KLAYMINC: Right, in Florida.

MR. MEL WEINBERG: Oh. the company's in Florida?

[10] MR. SOL KLAYMINC: Right.

MR. MEL WEINBERG: Oh, it's a Florida corporation?

MR. SOL KLAYMINC: Right. I'm using the same name—in other words, before it was Karen Bags, Incorporated.

MR. MEL WEINBERG: Right.

MR. SOL KLAYMINC: Now it's called Karen International Incorporated.

MR. MEL WEINBERG. And that's a separate corporation.

MR. SOL KLAYMINC: Right, completely different. I didn't put the officers in yet.

MR. MEL WEINBERG: All right. Now, you ship stuff down to them?

MR. SOL KLAYMINC: I'm going to ship stuff to here. I'm going to—maybe I'll ship it to Nate from there.

No, my plan would be in the future to ship a finished product [11] into Florida, you know, 'cause they'll be very close, from Haiti to Miami.

MR. MEL WEINBERG: Right.

MR. SOL KLAYMINC: —And Nate is not far away from there, and we can work out some transportation, you know. So from there we will distribute it wherever we have to.

MR. MEL WEINBERG: Well, we're renting^b more space by Nate for him.

MR. SOL KLAYMINC: Oh, good.

MR. MEL WEINBERG: So you'll have it. Now, the only thing I'm worried about is there's no way of them tracing that other corporation, you know.

MR. SOL KLAYMINC: No, no, no. I have no officers down as yet. I'm deciding, you know, who, which one of my friends I can put in because it'll be a temporary thing until we finish up with the other company.

[12] MR. MEL WEINBERG: All right, how much stuff are you going to ship down to 'em?

MR. SOL KLAYMINC: Well, at the present time it's being held up. You see, I—I sold to Loehmann's (I don't know if you know who Loehmann's is).

MR. MEL WEINBERG: Yeah, I heard of 'em.

MR. SOL KLAYMINC: Yeah, they're the largest discount place, I would say, in the country.

MR. MEL WEINBERG: Right.

MR. SOL KLAYMINC: One of the largest. And we did a very big job; in fact, we were their main producer—the biggest supplier of handbags to them. And at the time, we were—it looked bad. I said, "Look, Lydia" (that's the buyer's name)—I gave 'em a shot from the regular Karen company and I said, "Now (this is for my, another company. I want you to keep it [13] separate." Okay? Now, she bought from me alone about to the tune of about twenty-five to twenty-seven thousand dollars.

MR. MEL WEINBERG: Right.

MR. SOL KLAYMINC: Now, I shipped her the first shot, which was like nine thousand, and then some son of a bitch who was giving me problems there put a restraining order on Loehmann's. Evidently they found out that—well, that's—actually they're stopping the Karen Bags, Incorporated; they're not stopping the other one.

MR. MEL WEINBERG: Right.

MR. SOL KLAYMINC: But she got cold feet and she said, "Sol, I'm not going to take any more. I'm not going to ship out the stuff until this thing is straightened out." So I'm hoping that this C.I.T. is going to lift the restraining order, and then I could ship her the balance. The balance is coming, part of it is already in New York put away some place, and after that it's coming from Haiti, the balance.

[14] MR. MEL WEINBERG: Oh. But you got some stuff stashed away that you can use.

MR. SOL KLAYMINC: Right, exactly.

MR. MEL WEINBERG: I mean, is it stashed away safe that nobody knows?

MR. SOL KLAYMINC: Nobody'll know where it is.

MR. MEL WEINBERG: Because you know, apparently you must have a leak in your outfit if Loehmann's—you know, someone found out.

MR. SOL KLAYMINC: Well, they probaby were trying to find who some creditors were or somebody who was in with the receivables, and I guess they knew that we're working with Loehmann's and it could be, like you say, somebody from before. But right now there's only one name, my son, and this other guy that's connected with me right now who knows anything that's going on. Nobody else does.

[15] MR. MEL WEINBERG: All right, so what you're saying is you got enough stuff stashed away to give you—

MR. SOL KLAYMINC: —a start.

MR. MEL WEINBERG: —a start.

MR. SOL KLAYMINC: Right.

MR. MEL WEINBERG: What would you say, fifty thousand or so?

MR. SOL KLAYMINC: No, not quite. Twenty-five, thirty for sure.

MR. MEL WEINBERG: All right, that's enough

MR. SOL KLAYMINC: That's enough to give me a start.

MR. MEL WEINBERG: Right. All right, now, the other thing is with the—your lawsuit.

[16] MR. SOL KLAYMINC: Right.

MR. MEL WEINBERG: All right, where does that stand now?

MR. SOL KLAYMINC: Well, I have to call my lawyer, to be honest with you, and he says, "I'll advise you what to do." See, I mentioned Chapter XI and he says, "Chapter XI is out of it. It's got to be something else, but let me tell you," 'cause he's supposed to be a pretty big shot wher. it comes to bankruptcy. So I'll listen to him, I'll talk to him, and we'll go from there. Now, I—I got a plane ticket to go back Monday.

MR. MEL WEINBERG: Good.

MR. SOL KLAYMINC: Boy, they're charging a fortune of money.

MR. MEL WEINBERG: You're telling me. Well, we'll have cash up there for those pocketbooks.

[17] MR. SOL KLAYMINC: Oh, that's [LAUGHS]—that's nothing. That'll just about cover the plane fare. But this I have to give to the guy.

MR. MEL WEINBERG: Well, we'll get some money after the meeting. Are you listening?

MR. SOL KLAYMINC: Oh, okay, fine.

MR. MEL WEINBERG: You let me know how much you need and we'll rush it through for you.

MR. SOL KLAYMINC: Well, I'll tell you. Well, I'd like to get that charter finished with. In other words, once I leave you and I got the money for the charter, I'll get back to Haiti and I'll see that we get our check.

MR. MEL WEINBERG: Now, what do you mean by the—? You got to explain to me. You say “the charter”—what do you mean by “the charter”?

[18] MR. SOL KLAYMINC: Okay, it required five thousand dollars, a down—a deposit, when you declare a new company in Haiti and you want to get a charter or a franchise (let’s call it a franchise).

MR. MEL WEINBERG: All right.

MR. SOL KLAYMINC: Now, when the—when the franchise is granted, then they give you back that money, but of course then you pay the legal fees so it costs you maybe twelve, fifteen hundred dollars. So they want to make sure that no fly-by-nights come in there, and also you got to have a place, a business, where you’re operating from. Now, we have the place where we’re operating from, and I didn’t have the five thousand to give my attorney to go ahead with this.

MR. MEL WEINBERG: Okay, that’s no—we’ll take care of that for you.

[19] MR. SOL KLAYMINC: Okay, so if I could do that, then we can get the corporation going right away, our own, without this black man. I want to get this black man out of there.

MR. MEL WEINBERG: All right, we’ll take care of the black man and you’ll give us a look what machinery you want, and we’ll take care—now, what about this other lawsuit you got with this firm? For what they [IN-AUDIBLE]?

MR. SOL KLAYMINC: L.V.?

MR. MEL WEINBERG: Yeah, L.—

MR. SOL KLAYMINC: Well, well they haven’t bothered me lately. No, I settled with them for a hundred thousand dollars and I must have made payments of about eighteen, twenty, and they were going to do this and they were going to do that, and then I turned around and I sued them for two-and-a-quarter million, okay? Now, evidently since they got that they laid low; they

didn't press [20] nothing; I didn't make any payments to them and they didn't pursue anything.

MR. MEL WEINBERG: You must have scared the shit out of them.

MR. SOL KLAYMINC:— That's right. I imagine they would be very happy to say, "Hey, you want to call it off?" You know" It's not the L.V. I'm suing—I'm suing the attorneys for L.V.

MR. MEL WEINBERG: Oh, you sued the attorneys direct.

MR. SOL KLAYMINC: Right. They, you know, they had this article about me in the—and the fact that my business is closing—I'm blaming it on them also, so it—looks like my [INAUDIBLE]—

MR. MEL WEINBERG: Well, actually, it's not their fault, though, is it?

MR. SOL KLAYMINC: Yeah. Well, they didn't help me by putting that article there in the papers.

[21] MR. MEL WEINBERG: Well, yeah, but you were on the verge of going under anyway, right?

MR. SOL KLAYMINC: Well, it was—let's say it was slowing down and business was bad, the sales were not quite there, the financing was—you know, I was fighting for the financing to stay alive and all that, and I didn't give a shit anymore. At one point I wanted it to go down because I felt, "What am I going to save it for? So everything I make in the future I got to give to the factor." I was paying at one point to the factor like twenty-two, twenty-four percent interest, you know, and I owed them at one time a million dollars. So you know, you're talking about a couple—a hundred thousand dollars in interest each year. So there's—there's a profit right now, you know. If you had that, you would have no problem.

MR. MEL WEINBERG: How much do you think your bankruptcy would be for all together?

[22] MR. SOL KLAYMINC: Well, my liabilities will probably be about a million.

MR. MEL WEINBERG: A million?

MR. SOL KLAYMINC: Close, yeah.

MR. MEL WEINBERG: And how about your receivables?

MR. SOL KLAYMINC: Receivables and assets? They'll probably be able to squeeze out three hundred, maybe.

MR. MEL WEINBERG: you can't collect that, though, huh?

MR. SOL KLAYMINC: Not, not me. No.

MR. MEL WEINBERG: No.

MR. SOL KLAYMINC: No. They own all that.

[23] MR. MEL WEINBERG: Oh, they—oh, that's right, the factors get that.

MR. SOL KLAYMINC: Yeah, C.I.T., right. After them comes the other suppliers, which will get shit. They're going to look to go after me personally, of course, in the course of that and then I got this L.V. [INAUDIBLE]—

MR. MEL WEINBERG: Well—well, L.V. will go after you too?

MR. SOL KLAYMINC: Well, it depends what happens with this other suit, you know, if they're looking to make a deal. But I'm prepared to go personal, because it don't—it don't mean a thing to me.

MR. MEL WEINBERG: Yeah, what the hell can they do if you aint got nothing'?

MR. SOL KLAYMINC: Yeah, what are they going to do? I got this apartment. So I understand my lawyer here said that they got a Homestead Act here and they can't touch your apartment.

[24] MR. MEL WEINBERG: That's true. I don't think you can touch a guy's car or his home in Florida.

MR. SOL KLAYMINC: Right. That's right. In Florida, right.

MR. MEL WEINBERG: Right.

MR. SOL KLAYMINC: Oh, you heard that too.

MR. MEL WEINBERG: Yeah.

MR. SOL KLAYMINC: So that's the only thing, you know, they had one me. So I'll go personal. So what the hell are they going to take from me?

MR. MEL WEINBERG: Hey. Put it in your kid's name, I guess, huh?

MR. SOL KLAYMINC: Well, no, I'll just leave it as is, but like if they can't take it away I don't have to worry about whose name, you know, leave it under my wife and myself. I'm still not sure because with this L.V., I had my wife sign personally also.

[25] MR. MEL WEINBERG: Oh, they had her on the papers too?

MR. SOL KLAYMINC: Yeah, and also with C.I.T., so we don't know yet the—

MR. MEL WEINBERG: Well, what could C.I.T. do to you? They can't do—I wouldn't worry about them. I can take care of that problem.

MR. SOL KLAYMINC: Okay, if you can take care of them, then a big part—

MR. MEL WEINBERG: Yeah, but don't tell your lawyer or anyone.

MR. SOL KLAYMINC: I wouldn't tell a soul, but—

MR. MEL WEINBERG: But that, I don't think will be any problem. The only other problem would be Louis Vuitton.

[26] MR. SOL KLAYMINC: Right. Well, again, that—that libel suit that I'm countersuing them with might shut them up, too.

MR. MEL WEINBERG: Whose idea was that?

MR. SOL KLAYMINC: Well, it was mine, because as soon as the article came out, we saw the—that it was a lie; the article had a lie that they said I was fingerprinted, I was mugged, and I was amongst the mother-muggers, mother-rapers—you know, they made me look like I was the lowest in the—and it was definitely a case for libel.

MR. MEL WEINBERG: What did they actually get you for?

MR. SOL KLAYMINC: Well, they walked in again and they caught me with the L.V. stuff.

MR. MEL WEINBERG: Oh, you're manufacturing 'em?

[27] MR. SOL KLAYMINC: Right. I was the "king-pin," they said.

MR. MEL WEINBERG: Were you?

MR. SOL KLAYMINC: Yeah, I was.

MR. MEL WEINBERG: Huh?

MR. SOL KLAYMINC: I was.

MR. MEL WEINBERG: You're that big, huh?

MR. SOL KLAYMINC: Yeah, I was pretty big then. They took away almost, I would say, selling price of about two-fifty, three hundred thou'

MR. MEL WEINBERG: How many were you knocking out a week?

MR. SOL KLAYMINC: Well, I was selling quite a bit. I was pulling in I would say, from ten to twenty a week—cash.

[28] MR. MEL WEINBERG: You're kidding.

MR. SOL KLAYMINC: All cash, yeah. An then, boom.

MR. MEL WEINBERG: At least you have a couple—a good years at that?

MR. SOL KLAYMINC: Mel, but it wasn't—you know, I had everything going. You know, I started this thing from zero, this business. Yeah, I was—at one point I was doing beautiful. I bought a—picked up a hundred thousand in bonds you know, picked up this apartment, started to roll, and then all of a sudden, boom, the business went bad, this—they took this away. Then, you know—

MR. MEL WEINBERG: You never found out who ratted on you?

MR. SOL KLAYMINC: I got the guy.

[29] MR. MEL WEINBERG: Oh, you know who it is?

MR. SOL KLAYMINC: Yeah.

MR. MEL WEINBERG: No kidding.

MR. SOL KLAYMINC: I know who it is. He was in court and all, and to save himself, you know, for a few hundred dollars, a thousand dollars at the most that he would have had to pay, he ratted.

MR. MEL WEINBERG: So why didn't you give him the thousand dollars or even better?

MR. SOL KLAYMINC: Well, they already put the squeeze in, and he's an Israeli, and these people I find I don't like to do business with.

MR. MEL WEINBERG: No kidding.

[30] MR. SOL KLAYMINC: They're bad people.

MR. MEL WEINBERG: You know, someone else told me that about them.

MRS. SOL KLAYMINC [BACKGROUND]: He snitched.

MR. SOL KLAYMINC: I don't tell them. You heard my wife. He snitched.

MRS. SOL KLAYMINC [BACKGROUND]: Snitch.

MR. SOL KLAYMINC: Oh, yeah,—I—

MR. MEL WEINBERG: Jeez. You're standing there with a—you know, it was only a thousand dollars they would have got him for?

MR. SOL KLAYMINC: Well, that and maybe they had something else, but he was the main one that the case—they were able to win the case.

[31] MR. MEL WEINBERG: Were—were you only caught once, or what?

MR. SOL KLAYMINC: I was caught the first time I was working for somebody doing that stuff. That's when I first got started. That was two years prior. See, they just walked in on me. I guess somebody else told; you know, there's always somebody. That's why you got to be careful. That's why if it's done in Haiti, then you got the thing wide open.

MR. MEL WEINBERG: How many can you figure to turn out in Haiti a week?

MR. SOL KLAYMINC: Oh, I could work it up to—I'll tell you something about my background, Mel. I'm

known as the top production man in the industry. Not bragging, okay?

MR. MEL WEINBERG: No, no.

MR. SOL KLAYMINC: In other words, if anybody can do it, I'll do it, you know. If—if you tell me, yes, I can give you twenty-five hundred each week, I'll give you twenty-five hundred each week.

[32] MR. MEL WEINBERG: Can you turn that many out.

MR. SOL KLAYMINC: Oh, sure.

MR. MEL WEINBERG: Is that the Gucci's too, or just the L.V.'s?

MR. SOL KLAYMINC: Yeah, well, anyone of 'em. It doesn't matter which one.

MR. MEL WEINBERG: Can you do the luggage too?

MR. SOL KLAYMINC: Of course. Well, luggage—I'll get somebody to make the luggage. You got to set up a different operation to do that, really, you know. Then it's only a question of getting machinery. You know when you got money behind you, Mel, that—

MR. MEL WEINBERG: —you can get anything.

[33] MR. SOL KLAYMINC: —you can get any type of machinery.

MR. MEL WEINBERG: You know, the only reason I'm asking—this is all new to me.

MR. SOL KLAYMINC: Right.

MR. MEL WEINBERG: —and I don't know a damn thing about it.

MR. SOL KLAYMINC: Right.

MR. MEL WEINBERG: But like I said, we can use you and we want to go ahead and we're going to go ahead, and we just got—we get together—

MR. SOL KLAYMINC: Definitely.

MR. MEL WEINBERG: —and we'll work it out, and you know, if anything like, you think of later—bring it out. We're not—look—

[34] MR. SOL KLAYMINC: We'll talk.

MR. MEL WEINBERG:—I don't give a damn if you were facing ten years.

MR. SOL KLAYMINC: Naah. Naah.

MR. MEL WEINBERG: No, I'm just telling you.

MR. SOL KLAYMINC: Yeah.

MR. MEL WEINBERG: That doesn't make any difference. I'm with you all the way or not with you.

MR. SOL KLAYMINC: Okay.

MR. MEL WEINBERG: I mean, I won't go to bed with you unless I can go all the way.

MR. SOL KLAYMINC: Okay, Mel.

[35] MR. MEL WEINBERG: So you understand.

MR. SOL KLAYMINC: I'm glad to hear it.

MR. MEL WEINBERG: So that doesn't make any difference. It's just that, you know, I never realized that they could do this to you, that, you know, these people went after you that bad.

MR. SOL KLAYMINC: Yeah, well, I was the kingpin. [LAUGHS].

MR. MEL WEINBERG: Well, that's what happens when you get too big.

MR. SOL KLAYMINC: Yeah, well, I should have—I could have slowed it down a little bit, but there was a time when one of my cohorts out in California—he fought them in court and he beat them; the judge ruled that their trademark was invalid, and that's when I really started to go gung-ho. And you know, I couldn't stop any more once I got that big.

[36] MR. MEL WEINBERG: No kidding.

MR. SOL KLAYMINC: And then six months later the judge turned the decision around.

MR. MEL WEINBERG: How the hell's this guy in Jersey get away with it?

MR. SOL KLAYMINC: Well, he does it very sly, very small. I mean, it doesn't compare to, you know, what I was doing.

MR. MEL WEINBERG: How many can he—was he—how many can the guy turn out?

MR. SOL KLAYMINC: He could probably turn out five hundred pieces a week, you know, capacity, you know.

MR. MEL WEINBERG: And they haven't caught him yet?

MR. SOL KLAYMINC: No. He jumps from one place to another, you know.

[37] MR. MEL WEINBERG: You mean, he moves his whole factory?

MR. SOL KLAYMINC: No, not his factory. He doesn't have his' own. He has this guy make one style, this guy would make one style, he has an answering service, nobody can take an order—give him an order unless you call his answering service, and I'm the only one who he gave his home number to.

MR. MEL WEINBERG: Ahhh. So he works in a small type of operation.

MR. SOL KLAYMINC: yes, a smaller, smaller operation.

MR. MEL WEINBERG: yeah, but doesn't he need the factories that see 'em?

MR. SOL KLAYMINC: What's that?

MR. MEL WEINBERG: What does he—subcontract everything out?

[38] MR. SOL KLAYMINC: Yeah. Right.

MR. MEL WEINBERG: Don't these factories get wise what he's doing?

MR. SOL KLAYMINC: Well, they're taking a little chance and they're getting paid for it.

MR. MEL WEINBERG: Oh, oh.

MR. SOL KLAYMINC: See? So that's why it's so high. That's why I say, made down there I can save at least twenty-five percent, and if I see a steady run, if I'm up to, let's say, twenty-five hundred or—three thousand or four thousand each week, I can even reduce the price.

MR. MEL WEINBERG: You know, one thing, you know—I don't know that much about pocketbooks, but you know, I looked at a real one and yours?

[39] MR. SOL KLAYMINC: Yeah.

MR. MEL WEINBERG: I couldn't tell the difference.

MR. SOL KLAYMINC: Of course. No, you can't. In fact, a lot of times if you go into Saks Fifth Avenue and you take a look at some of those, mine look better'n theirs.

MR. MEL WEINBERG: That's funny, you know it?

MR. SOL KLAYMINC: Now, you want to know something? When L.V. confiscated my goods, the lawyer said, "You know, the son of a bitch makes a good product?"

MR. MEL WEINBERG: Well, the—

MR. SOL KLAYMINC: "It looks good." Yeah.

MR. MEL WEINBERG: Well, that's a compliment.

[40] MR. SOL KLAYMINC: Well, I, I, I was in it long enough. I know.

MR. MEL WEINBERG: You should have told him, "Forget the case and give me a job."

MR. SOL KLAYMINC: [LAUGHS] I didn't need their job at that time. No, I was riding pretty high at one point, and in fact, only two years ago a guy offered me a million dollars for my business.

MR. MEL WEINBERG: No kidding.

MR. SOL KLAYMINC: And I wanted two and we—I said, "Look, I'm not hungry. We'll wait." And that's what happened.

MR. MEL WEINBERG: Yeah, well, hey, we're all smart.

MR. SOL KLAYMINC: Yeah.

[41] MR. MEL WEINBERG: You know, second-guessing. Who the hell knows what's happening a year from now?

MR. SOL KLAYMINC: You know what my wife said? My wife said, "Sol, I think God wants you to struggle hard, never have too much money, so you always keep—keep going, 'cause once you stop and slow down and retire, you'll be—you'll be a vegetable."

MR. MEL WEINBERG: That's true.

MR. SOL KLAYMINC: Maybe that's it.

MR. MEL WEINBERG: There's a lot of truth to that, Sol.

MR. SOL KLAYMINC: And I'm all excited. I feel I got a good ten years, you know. I'm sixty-four, but I got a good ten years. I can stay with the kids. My son can't keep up with me, even.

[42] MR. MEL WEINBERG: How long do you think the L.V.'s will still be popular in this country?

MR. SOL KLAYMINC: It could be good for another five years, but I would say a couple-a years but sure, but sure. If something would happen in six months, you still got a year to run before, you know, before everybody gets in on it.

MR. MEL WEINBERG: All right, I guess you answered most of my questions.

MR. SOL KLAYMINC: And it could be—I think it could be another five years, then years, you know. Like, three, four years ago, they said, "How long can this be good? Another year?" But the women keep buying. Every place you look, there's somebody wearing a bag.

MR. MEL WEINBERG: Yeah.

[43] MR. SOL KLAYMINC: And the blacks are into it, so they'll be buying it.

MR. MEL WEINBERG: Yeah, it's true. That's true.

MR. SOL KLAYMINC: Yeah, there's a big market out there, a tremendous market.

MR. MEL WEINBERG: They must make a fortune on their bags.

MR. SOL KLAYMINC: [LAUGHS] Oh. Are you kidding? Jesus Christ.

[MRS KLAYMINC SPEAKS IN BACKGROUND]: Yeah, Gucci wanted to discontinue the fabric and they're still running the same fabric.

MR. MEL WEINBERG: Gucci doesn't make their fabric. It's made in East Ger—in West Germany somewhere.

MR. SOL KLAYMINC: Well, wherever. Well, I made my connection with the Gucci fabric: I got up to forty-eight hundred yards of fabric that I could buy.

[44] MR. MEL WEINBERG: Oh, yeah? Beautiful.

MR. SOL KLAYMINC: From the guy on the West Coast. Now I'll—I'll start with the—and also the same party said if I want to make the L stuff scratch, from the scratch, it'd take sixty days, you know, to come the route that I told you, Japan, Hong Kong and here, or directly to Haiti.

MR. MEL WEINBERG: All right, this guy can order it for us?

MR. SOL KLAYMINC: Yes, he can order it.

MR. MEL WEINBERG: All right, what we'll do then, okay?—you give me—tell the guy I'm going to call him and let me know how much he wants down.

MR. SOL KLAYMINC: Hm hmm.

[45] MR. MEL WEINBERG: We'll get him the money out to order the stuff.

MR. SOL KLAYMINC: Yeah?

MR. MEL WEINBERG: All right?

MR. SOL KLAYMINC: No, he'll take my word for it. If I tell him to order it—

MR. MEL WEINBERG: Oh, he will?

MR. SOL KLAYMINC: Yes, my word is good enough with him. We—we dealt that way.

MR. MEL WEINBERG: Oh, because Nate—Nate told me, you know, that you need the money for it—

MR. SOL KLAYMINC: Yeah, right. It depends who and what. When you're talking about these guys—

[46] MR. MEL WEINBERG: Well, I'll tell you the truth. If we got to pay him anyway, what the hell difference does it make? Maybe you'd get a better deal if you pay him right away.

MR. SOL KLAYMINC: Oh, definitely. But I wouldn't maybe trust the guy to pay that type of money right away.

MR. MEL WEINBERG: Well, you know what we'll do?

MR. SOL KLAYMINC: You give him some on account—

MR. MEL WEINBERG: I'll give him some on account and I'll put in escrow with an attorney.

MR. SOL KLAYMINC: That's right. Something like that yes. Upon delivery you get the whole thing.

MR. SOL KLAYMINC: Okay.

[47] MR. MEL WEINBERG: All right?

MR. SOL KLAYMINC: Right.

MR. MEL WEINBERG: And you tell me—and order enough.

MR. SOL KLAYMINC: Right. Now, I'm going to try to get from the guy in Jersey enough to get started.

MR. MEL WEINBERG: Right.

MR. SOL KLAYMINC: And then order—

MR. MEL WEINBERG: Now that's the main thing. That he keeps us going.

MR. SOL KLAYMINC: Right, yeah. Right now I'll get him to keep you going. Let's—when I finish Tuesday if you give me some kind of order, you know, I'll say, "Okay give me a thousand" or give me two thousand," and I'll get this guy going and in two, three weeks he could have it.

[48] MR. MEL WEINBERG: All right.

MR. SOL KLAYMINC: And the same with the other guy out here in Florida. You know, these guys used to work with me on that stuff.

MR. MEL WEINBERG: Oh, oh, that's right—that's the Gucci guy in Florida.

MR. SOL KLAYMINC: One is the Gucci and the other one—is the L. It's better this way. This way your production'll be better because neither one can produce any real amounts. You know what I mean?

MR. MEL WEINBERG: Right.

MR. SOL KLAYMINC: Thy're not big operators.

MR. MEL WEINBERG: And they can be trusted, though.

[49] MR. SOL KLAYMINC: Yeah. No, I worked with them a long time, and there's no need for me to hand anything over until you get delivery.

MR. MEL WEINBERG: beautiful.

MR. SOL KLAYMINC: But the fact that I got both their home numbers—you have nothing to worry about, but they can be trusted, 'cause many's the time I owed them ten or fifteen and vice-versa, and we never worried.

MR. MEL WEINBERG: All right, I think your problems are solved, Sol.

MR. SOL KLAYMINC: Okay, Mel.

MR. MEL WEINBERG: All right? And I'll see you Tuesday. I'm going to be up there Sunday night, you know.

MR. SOL KLAYMINC: Oh, when are you flying in there?

* * * *

[57] MR. SOL KLAYMINC: Okay.

MR. MEL WEINBERG: Hey, I admire a man who tells me exactly. You didn't lie to me about the lawsuit—

MR. SOL KLAYMINC: I'll give you every—

MR. MEL WEINBERG: —you didn't lie to me—

MR. SOL KLAYMINC: —I don't lie about anything. I might forget something, but if you ask me, you know, anything, I'll tell you the truth. That's the way it is.

MR. MEL WEINBERG: You think you got a chance to collect that money from the lawsuit?

MR. SOL KLAYMINC: I definitely feel we got a good shot. But if I claim personal bankruptcy, that money will be in an estate to pay off. You understand?

[58] MR. MEL WEINBERG: Well, we got—we got—

MR. SOL KLAYMINC: —it depends how much you would collect. If I collect, let's say, if I could collect fifty percent, hell, I could more than pay off everybody and still have some left for myself. So that's—

MR. MEL WEINBERG: Well, did they make you an offer yet to settle?

MR. SOL KLAYMINC: No, but in the next couple of weeks I think they have to do something. They have to answer the charges.

MR. MEL WEINBERG: Oh, they have to answer the charges.

MR. SOL KLAYMINC: Right. So we'll—by that time, I guess, that's when they might want to make an offer.

MR. MEL WEINBERG: Yeah?

[59] MR. SOL KLAYMINC: But so far they haven't followed up with what I owe them, 'cause this way they didn't want to give me any—you know, six months ago when they gave me this and things were going real bad, I said to them, "Well, how about you reduce the interest rate or give me an extended term?" They said, "Nothing doing. If you can't make the payment, we'll take a judgment against you," you know. Well, I didn't make the payments and they didn't do a fucking thing after I gave them libel—the countersuit. They haven't once called me, "Hey, where's the payment?" or nothing. It's just laying in abeyance.

MR. MEL WEINBERG: Tough outfit, huh?

MR. SOL KLAYMINC: Well, they're tough, yeah, but right now I'm—I'm on top. I'm ahead of them, let's say, 'cause they know that my business is out, you know; where are they going to get paid? And meanwhile I got a two-and-a-quarter-million—they hate to see a suit of that size, you know, out, because if it gets out in the newspapers, it looks bad for the company.

* * * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[Title Omitted in Printing]

TRANSCRIPT OF TELEPHONE CALL
FROM MR. MEL WEINBERG TO MR. SOL KLAYMINC

TAPE # 2
4/4/83

* * * *

[8] MR. SOL N. KLAYMINC: Okay.

MR. MEL WEINBERG: All right? Because I got to show the bank where I put the money.

MR. SOL N. KLAYMINC: I see. All right.

MR. MEL WEINBERG: I asked my attorney, this attorney that works for me, I got no problems and he can put it in my corporation.

MR. SOL N. KLAYMINC: Okay. Very good.

MR. MEL WEINBERG: All right?

MR. SOL N. KLAYMINC: Yeah.

MR. MEL WEINBERG: Who is the guy out in California?

MR. SOL N. KLAYMINC: His name is Jerry Young.

[9] MR. MEL WEINBERG: Jerry Young?

MR. SOL N. KLAYMINC: Right.

MR. MEL WEINBERG: All right. Long as he understands.

MR. SOL N. KLAYMINC: No, he'll understand. He—he's worked with the boys before, I think, in some way or another.

MR. MEL WEINBERG: All right, long as—

MR. SOL N. KLAYMINC: He's been around.

MR. MEL WEINBERG: Long as he understands where I come from. I'm not going to bother the guy.

MR. SOL N. KLAYMINC: Right.

MR. MEL WEINBERG: But all he knows that if I call him up I need material, he takes care of it.

MR. SOL N. KLAYMINC: Right.

[10] MR. MEL WEINBERG: Okay?

MR. SOL N. KLAYMINC: Right.

MR. MEL WEINBERG: And whatever we need to get production—

MR. SOL N. KLAYMINC: I need Haiti first—

MR. MEL WEINBERG: Haiti I'll just set up. You bring me—

MR. SOL N. KLAYMINC: No, but I want to go down there Wednesday.

MR. MEL WEINBERG: You can leave the—the—Wednesday to go down.

MR. SOL N. KLAYMINC: This Wednesday I must straighten out there.

MR. MEL WEINBERG: Bring me the bills. Here's what you go to do.

MR. SOL N. KLAYMINC: Yeah.

MR. MEL WEINBERG: Everything you'll need to pay out there, bring [11] me the bills. We'll send checks out.

MR. SOL N. KLAYMINC: Yeah, a check'll be fine. And let's say—you can't send it to him. You could do two things. Either give it to my lawyer there, I got his card.

MR. MEL WEINBERG: All right, you give me all that information.

MR. SOL N. KLAYMINC: Right.

MR. MEL WEINBERG: I'll get you set up.

MR. SOL N. KLAYMINC: But putting it in writing don't mean a shit. You know, I got to explain all that.

MR. MEL WEINBERG: Let me explain the reason why, okay?

MR. SOL N. KLAYMINC: Go ahead.

MR. MEL WEINBERG: You know, I'm putting all this bread up for you.

MR. SOL N. KLAYMINC: Yep.

[12] MR. MEL WEINBERG: Okay? You're no youngster no more. All right?

MR. SOL N. KLAYMINC: Yeah, I feel young.

MR. MEL WEINBERG: I know, but you're like me. I can go tomorrow too.

MR. SOL N. KLAYMINC: Yeah.

MR. MEL WEINBERG: All right?

MR. SOL N. KLAYMINC: Yeah.

MR. MEL WEINBERG: I just want to protect my ass that the—God forbid if anything happens to you.

MR. SOL N. KLAYMINC: Yeah.

MR. MEL WEINBERG: All right? That these guys know they're dealing with me, to give us the material.

MR. SOL N. KLAYMINC: Oh yeah. Yeah.

[13] MR. MEL WEINBERG: And then your son could stay in Haiti with you. I don't want you to come back to the States. You run your business. We'll take care of everything else here.

MR. SOL N. KLAYMINC: Okay, fine.

MR. MEL WEINBERG: We'll bring it in with our planes. We'll pick it up directly from him.

MR. SOL N. KLAYMINC: Beautiful.

MR. MEL WEINBERG: Bring it in with our planes. There'll be no Customs or nothing.

MR. SOL N. KLAYMINC: Wow, that's great.

MR. MEL WEINBERG: All right?

MR. SOL N. KLAYMINC: Yeah.

MR. MEL WEINBERG: And this is what I want understood.

[14] MR. SOL N. KLAYMINC: Okay.

MR. MEL WEINBERG: Fair enough?

MR. SOL N. KLAYMINC: Right.

MR. MEL WEINBERG: I'm going to send you a thousand bucks tomorrow, you got it.

MR. SOL N. KLAYMINC: Okay. But we need—I want to get my own franchise. This guy, by not paying—you see, we're using his franchise—

MR. MEL WEINBERG: Whatever you need, you—

MR. SOL N. KLAYMINC: I got to explain all that to you.

MR. MEL WEINBERG: I just told you about the franchise.

MR. SOL N. KLAYMINC: Right.

MR. MEL WEINBERG: You tell me—

[15] MR. SOL N. KLAYMINC: I need 5 G's for that and then you get it back.

MR. MEL WEINBERG: You give me a thing what you need it for, who the check's being made out to—

MR. SOL N. KLAYMINC: Right. Okay.

MR. MEL WEINBERG: My lawyers will take care of it.

MR. SOL N. KLAYMINC: Okay.

MR. MEL WEINBERG: Fair enough?

MR. SOL N. KLAYMINC: We'll call—we'll call that lawyer in Haiti tomorrow.

MR. MEL WEINBERG: No problem.

MR. SOL N. KLAYMINC: Okay? I'll tell them to set up an appointment for Wednesday. He's got the five thousand and he can proceed with the franchise and we don't need this black man in there.

[16] MR. MEL WEINBERG: Now, this guy, Young—gets the material for Louis Vuitton?

MR. SOL N. KLAYMINC: No, no, no. He doesn't get it from them. (LAUGHS SLIGHTLY)

MR. MEL WEINBERG: No, no, I'm tell—he's got the way to get it from . . .

MR. SOL N. KLAYMINC: Yeah, yeah. It goes through Japan and Hong Kong.

MR. MEL WEINBERG: Yeah, I don't give a fuck where he goes. Long as he can supply it.

MR. SOL N. KLAYMINC: Right. Right.

MR. MEL WEINBERG: All right?

MR. SOL N. KLAYMINC: Right.

* * * *

[22] MR. MEL WEINBERG: Well, when I sit with Jerry I want it out in the open. He knows your problem after he comes and says something later on.

MR. SOL N. KLAYMINC: No, there'll be no problems.

MR. MEL WEINBERG: No, no, I'm just telling it. Now we're going to take care of your problems. Even if it means I got to go to—what was that friggin' lawyer's name you mentioned?

MR. SOL N. KLAYMING: Uh . . . Bainton?

MR. MEL WEINBERG: Bainton?

MR. SOL N. KLAYMINC: Do you mean the LV lawyer?

MR. MEL WEINBERG: Yeah.

MR. SOL N. KLAYMINC: Yeah.

MR. MEL WEINBERG: Even if we've got to go and settle it to get [23] him off your back.

MR. SOL N. KLAYMINC: Well, uh . . . this guy, I told you, if we're suing him for two and a quarter, a million dollars, he'll probably want to settle for zero if I'd let him.

MR. MEL WEINBERG: All right. We'll get his—look, we'll get you squared away. We want you down in Haiti.

MR. SOL N. KLAYMINC: Yeah, that's where the money is.

MR. MEL WEINBERG: And out of trouble. And then we'll handle it from there. Now, we're getting—we're only own fifty percent of the business, right?

MR. SOL N. KLAYMINC: Okay.

MR. MEL WEINBERG: Fair enough?

MR. SOL N. KLAYMINC: That sounds good. I figured we'll discuss all that tomorrow.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[Title Omitted in Printing]

TRANSCRIPT OF AUDIO TAPE

TAPE 6A—12:00 p.m. to 12:55 p.m.

4-5-83

Meeting attended by Mel Weinberg, Sol Klayminc and Gunnar Askelund at Plaza Hotel.

[25] MR. MEL WEINBERG: That's a lot of money to be paying them.

MR. SOL KLAYMINC: Yeah. I asked if they could reduce the payments you know—stretch them out or reduce the interest. I think I was paying sixteen and a half percent interest. That's when interest rates started to fall. This was about a year ago. And no—nothing doin' if you miss one payment we're gonna take a judgment out, you know.

MR. GUNNAR ASKELUND: Umm. Hmm.

MR. SOL KLAYMINC: Anyway, the last three or four months or, you know, I told them, I can't pay you, okay.

* * * *

[49] MR. SOL KLAYMINC: Yeah. I asked if they could reduce the payments you know—stretch them out or reduce the interest. I think it was sixteen and a half percent interest. That's when interest rates started to fall. This was about a year ago. And no—nothing doin' if you miss a payment we're gonna take you [INAUDIBLE].

MR. GUNNAR ASKELUND: Umm. Hmm.

MR. SOL KLAYMINC: Anyway, the last three or four months or ya' know told them, I could pay you okay.

Then I—then I turned around and I countersued them. Ya' know they made a very bad article. I don't have a copy but my lawyers have it. Where they called me all kinds of names and all that. In fact, the guy's sorry like hell he ever put that in because since I sued them I—

[50] MR. GUNNAR ASKELUND: The Wall Street Journal's sorry?

MR. SOL KLAYMINC: No, well we didn't want to go with the Wall Street Journal because we thought they were too big an outfit. [INAUDIBLE] they can stretch you until God knows when. But these attorneys represent Louis Vuitton we sued them. The guy personally who made the article cost the company and they hate to have a suit against them. It doesn't look good.

MR. GUNNAR ASKELUND: Yeah.

MR. SOL KLAYMINC: He wanted to go to trial with them of course.

MR. GUNNAR ASKELUND: And you just did this?

MR. SOL KLAYMINC: Yeah, this is only about a month or so two months ago. And since I did this they—they're not sending—I mean they're not taking the judgment and they're doin' nothing.

[51] MR. GUNNAR ASKELUND: They're scared.

MR. SOL KLAYMINC: I have the feeling that they would be very happy to wipe the whole slate clean if I drop my suit, which I don't intend to do. Because the way it sits right now I might have to go personal. If I should win the big suit, they—they might take away that money coming in. So, you know [INAUDIBLE] talk to my lawyers.

MR. GUNNAR ASKELUND: What do you mean they take that money away from you. I don't understand.

MR. SOL KLAYMINC: I might have to go personal cause I got them on my back. I got CIT on my back—

MR. GUNNAR ASKELUND: Right. [INAUDIBLE].

* * * *

[34] MR. GUNNAR ASKELUND: He gets this overseas this material?

MR. SOL KLAYMINC: Yeah, it's made in Japan and goes to Hong Kong. They wrap it around with something to camouflage it.

MR. MEL WEINBERG: This is what you need? That's it?

MR. SOL KLAYMINC: Right.

* * * *

MR. MEL WEINBERG: You sign that and anything else you need just put it down.

[35] MR. SOL KLAYMINC: Alright, so we got here total investment and the [INAUDIBLE]. Okay, we need five thousand to payroll and then ten to twelve thousand for equipment. Okay? Let me put that down.

MR. MEL WEINBERG: Yeah, write whatever you need.

MR. SOL KLAYMINC: \$10,000 working capital, also—see I'm gonna show you how I'm fair—so this will make it twenty-five which is worth twenty-five percent, right?

MR. GUNNAR ASKELUND: Right.

MR. SOL KLAYMINC: I'm only going to put down ten thousand in equipment—

MR. GUNNAR ASKELUND: That's right.

[36] MR. SOL KLAYMINC: 'Cause I think that's all I'll need there.

MR. GUNNAR ASKELUND: Okay.

MR. SOL KLAYMINC: Now I need a double-dinker and—

MR. MEL WEINBERG: Hold it. Put down more, don't leave yourself—I'd rather ya put down—

MR. GUNNAR ASKELUND: Put down the twelve figure.

MR. MEL WEINBERG: Nah, put down more because if you need more—

MR. SOL KLAYMINC: Put down 20, \$20,000?

MR. MEL WEINBERG: Put down \$25,000 for equipment—if you don't take it, it doesn't make any difference.

[37] MR. SOL KLAYMINC: All right. Twenty-five thousand dollars.

MR. MEL WEINBERG: Put down you know—you may have to buy another machine.

MR. SOL KLAYMINC: In—in additional equipment.

MR. GUNNAR ASKEKUND: Right, that'll include the freight and everything down there.

MR. SOL KLAYMINC: Yeah, twenty-five will do it. We got a big forty-foot trailer truck. It cost like 4200, somethin' like that.

MR. GUNNAR ASKEKUND: All right.

MR. SOL KLAYMINC: Then you can move everything.

[38] MR. GUNNAR ASKEKUND: Okay. Put it on a boat and go down there right?

MR. SOL KLAYMINC: Yeah, takes about 10 days. Plus \$10,000 working capital. Additional machines and equipment.

MR. GUNNAR ASKEKUND: You like it down there in Haiti?

MR. SOL KLAYMINC: It could be very nice. If I had a nice successful thing going, y'know.

MR. GUNNAR ASKEKUND: Could you live there?

MR. SOL KLAYMINC: You could live very nicely there.

MR. GUNNAR ASKEKUND: Could you live there?

MR. SOL KLAYMINC: Well, I'm in Miami, y'know my home is down in Florida—

[39] MR. GUNNAR ASKEKUND: Yeah.

MR. SOL KLAYMINC: And I could like ah a week ten days back to Miami and stay there.

MR. GUNNAR ASKEKUND: What is it an hour and a half down there?

MR. SOL KLAYMINC: Yeah, an hour and a half flight. And then you go—

MR. MEL WEINBERG: Fill out this thing so we get this thing down with.

MR. SOL KLAYMINC: You want to read this?

MR. MEL WEINBERG: We got another meeting coming.

MR. SOL KLAYMINC: You want me to rewrite it?
It doesn't look, ah—

[40] MR. MEL WEINBERG: Nah, this is just it put the date on there.

MR. SOL KLAYMINC: Today is four—

MR. GUNNAR ASKELUND: Five.

MR. SOL KLAYMINC: Okay total investment 100,000 on plant and equipment. Four partners with equal shares [INAUDIBLE] machines plus 10,000 in working capital. Okay, the word capital is payroll.

MR. MEL WEINBERG: Alright, now we gonna give you now a \$1,000 of payroll, mark down so it shows that I paid it to you. Put it down on another piece of paper.

MR. SOL KLAYMINC: Smaller piece?

[41] MR. MEL WEINBERG: You can put it on a big piece this is just going to them. Nobody sees it.

MR. SOL KLAYMINC: Should I put received?

MR. MEL WEINBERG: Received \$1,000 for payroll—and I don't need a receipt for the bags.

[PARTIES SPEAKING TOGETHER]

MR. MEL WEINBERG: All right, you give me a receipt tonight for the five because I didn't give you the five yet.

MR. SOL KLAYMINC: So you want to add this on today, sign this and then sign again—or do you wanna leave it—

MR. MEL WEINBERG: You sign that and ah—

[42] MR. SOL KLAYMINC: All right, I'll sign this and tonight I'll sign the other.

MR. GUNNAR ASKELUND: Right. [MR. ASKE-
LUND COUNTING MONEY]

MR. SOL KLAYMINC: I know how to build up the business.

MR. MEL WEINBERG: Hey, I put faith in you didn't I? Let me tell you something Sol, we'll never bother you, just get us our bags.

MR. SOL KLAYMINC: Now what do ya—how many do you feel you need during the year let's say for next year.

MR. MEL WEINBERG: I use twenty-five hundred a month and if I need more I'll have to let you know.

[43] MR. SOL KLAYMINC: That'll be fine. Between—

MR. MEL WEINBERG: —and another thing. I want a meeting set up, if we don't do this right away, we can do this after you get back from maybe California. I want a meeting set up with George. You sure there's a thousand there?

MR. GUNNAR ASKEKUND: Ah that six-twenty I'm paying for the bags—six-twenty-five—count—count that—

MR. MEL WEINBERG: We running out of money there—we got any money left?

MR. GUNNAR ASKEKUND: Let me give you this here. We'll have the ticket tonight. That's basically it. I think it gets in like 9 o'clock or something.

[44] MR. MEL WEINBERG: We got any money left there?

MR. GUNNAR ASKEKUND: Yeah, why?

MR. MEL WEINBERG: Cause I got more coming up.

MR. SOL KLAYMINC: You goin' have a round-trip for me?

MR. MEL WEINBERG: Yeah, round-trip first class.

MR. SOL KLAYMINC: I'll come back to ah—

MR. MEL WEINBERG: West Palm.

MR. SOL KLAYMINC: West Palm? They go to West Palm?

MR. GUNNAR ASKEKUND: No, it's to Miami.

[45] MR. MEL WEINBERG: I thought it was West Palm.

MR. GUNNAR ASKEKUND: No, Miami, I think it's a direct flight to Miami.

MR. MEL WEINBERG: There's none to West Palm? Well, whatever it is—West Palm, Miami—I don't know.

MR. GUNNAR ASKELUND: It looks like you got a nice tan. You been out hittin' that little white one?

MR. MEL WEINBERG: Now you got a Jewish bank roll.

MR. GUNNAR ASKELUND: I like it when I get a chance to golf. What's your handicap?

MR. SOL KLAYMINC: About fifteen. I'm a big crook.

MR. GUNNAR ASKELUND: They call you crook? You're really a ten right?

MR. SOL KLAYMINC: I used to be a seven, eight. I love the game. But you know, when your mind is not on the game, forget it.

MR. MEL WEINBERG: Is that right?

MR. SOL KLAYMINC: True [COUNTING]. Okay now, I need to protect myself against these people because you know I had a to-do with them several times. I got to make sure I don't expose myself to them again because it would be a criminal action.

MR. GUNNAR ASKELUND: Right.

MR. SOL KLAYMINC: So how do we protect it? Like what he was saying, if I have my friend ship it to Haiti, he says there's no problem to get the goods there.

[47] MR. GUNNAR ASKELUND: Right.

MR. SOL KLAYMINC: Can you fly into Haiti? [INAUDIBLE]

MR. MEL WEINBERG: We'll take care of it.

MR. SOL KLAYMINC: If you fly it in, fly it out. I don't think there'll be any problem.

MR. GUNNAR ASKELUND: That's no problem.

MR. MEL WEINBERG: No problem, let me tell you something [INAUDIBLE] when you meet with, what's his name Young?

MR. SOL KLAYMINC: Jerry Young.

MR. MEL WEINBERG: All right. Our plane when they come in, our attorney there will pay him the cash.

* * * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[Title Omitted in Printing]

TRANSCRIPT OF PROCEEDING

Before:

HON CHARLES L. BRIEANT,

District Judge.

April 6, 1983

2:00 p.m.

* * * *

[2] THE COURT: Mr. Bainton, you may be heard.

MR. BAINTON: Thank you, your Honor. While you were out of the district I presented an unusual application to Judge Lasker, who was the emergency judge. He granted the application and suggested that I come down and speak with you about it at the earliest opportunity.

Your Honor may recall—and by the way, your Honor, the order signed by Judge Lasker was kept filed under seal.

THE COURT: Where does it say that?

MR. BAINTON: The last discretal paragraph, your Honor.

The order appoints Mr. Devlin and myself to investigate and ultimately to prosecute alleged criminal contempt of this Court's order by one Sol Klayminc, Karen Handbag, Jade Handbag and others.

THE COURT: This is a second contempt?

MR. BAINTON: Yes, sir. My affidavit shows, and is now somewhat out of date, that Mr. Klayminc has established a factory in Haiti.

Once were were appointed we advised private investigators who were working for us that they were agents

of the government and bound by all of the restrictions that that embodies, but also that they were at liberty to tape record certain telephone conversations [3] and tape record certain meetings.

Your Honor, may I continue this in an empty room, please?

THE COURT: Would the gentleman who entered be good enough to tell me who you are?

MR. KOPIT: William Kopit, counsel for the American Hospital Association.

THE COURT: You may sit down. As a general matter, I don't hold in camera proceedings. If you want to keep something secret, the best thing is to report it in the afternoon because all the reporters go to lunch and they don't come back. They don't work quite the same hours that I do.

Please proceed.

MR. BAINTON. In any event, your Honor, meetings were had yesterday at the Plaza and telephone conversations have been recorded. They have established conclusively that Mr. Klayminc has continued to be engaged in conduct proscribed by this Court. He has delivered to us 25 bags and has asked for \$100,000 investment in the Haitian operation. A meeting has been scheduled for next Thursday in Beverly Hills to meet with the fabric supplier. The fabric supplier, your Honor, is Mr. Jerry Young, a participant in a case called Vuitton, S.A. [4] vs. General Enterprises.

THE COURT: That is the case that Judge Reale had?

MR. BAINTON: That is correct, your Honor. However, Mr. Young has indicated that he is well aware of this Court's order and of Mr. Klayminc's recent problems in this courthouse. You will recall that he was convicted of criminal conduct roughly six to nine months ago.

THE COURT: Is he still on probation?

MR. BAINTON: Yes, he is.

THE COURT: It occurs to me—perhaps I ought to wait until you finish your presentation, but it occurs to me that you ought to notify the United States Attorney's office of what is going on here because it may reach a serious enough level that that office may regard itself as directly concerned. It is not my conclusion. That is just an observation. It seems to me it would be appropriate to make a disclosure to the chief of the criminal division at the office of the U.S. Attorney in this district, and if they ask for any additional information or further cooperation, naturally it would be your duty to accommodate those requests.

What is your present request of this Court?

MR. BAINTON: Your Honor, I have no present request. I gave Judge Lasker my word that I would meet [5] with you to bring to your attention the existence of the order that he signed, the nature of the investigation which is presently being conducted, and I am simply honoring my word to Judge Lasker.

THE COURT: I would like you to arrange for full debriefing of your information to the United States Attorney's office. If they refuse to hear it, it is not in the nature of a direction on my part that they must, but I think a certain degree of coordination would be appropriate here because from what has been set forth in the papers and from what you say, the matter is more serious than the typical violation of the sort which is commonly referred to in this district as the T-shirt cases.

MR. BAINTON: Yes, sir.

THE COURT: I know that this is not a T-shirt case but that is the ordinary type of commercial violation and it seems to have gone quite beyond it if you have a probationer who is violating.

So I think you should do that. That is only a suggestion not a mandate of the Court.

MR. BAINTON: Your Honor, I will of course take your suggestion and see that it is done this afternoon.

May I ask your Honor, consistent with Judge [6] Lasker's order, that the transcript of these proceedings be kept sealed pending order of this Court?

THE COURT: Yes, but accessible to the U.S. Attorney's office and to your office also.

MR. BAINTON: Thank you, your Honor.

THE COURT: Thank you, gentlemen.

(Court adjourned)

REBOUL, MACMURRAY, HEWITT, MAYNARD &
KRISTOL

45 Rockefeller Plaza
New York, N.Y. 10111

April 6, 1983

Lawrence Pedowitz, Esq.
Chief, Criminal Division
Office of the United States Attorney
One St. Andrew's Plaza
New York, N.Y. 10007

United States of America, ex rel.,
Vuitton et Fils S.A.
v. Karen Bags, Inc., et al.
78 Civ. 5863 (CLB)

Dear Mr. Pedowitz:

At the suggestion of Judge Brieant, I am bringing to your attention an order signed by Judge Lasker in Judge Brieant's absence in the above-entitled criminal contempt proceedings, together with an affidavit of mine submitted in support of that order.

The criminally contumacious events predicted in my affidavit have come to pass. Should anyone from your office have any interest in this matter I am obviously willing to make the tape recordings and other evidence available for your review in a manner which will not compromise its chain of custody.

Very truly yours,

/s/ J. Joseph Bainton
J. JOSEPH BANTON

JJB:Di
Enclosures

Copy to Hon. Charles L. Brieant

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[Title Omitted in Printing]

TRANSCRIPT OF TELEPHONE CALL

TAPE 11

4/8/83, 8:15 A.M.

* * * *

[7] MR. MEL WEINBERG: Yeah, well, that's what I told him to do, arrange, see what they want, and take care of that, get to lawyer down there and buy 'em out.

MRS. SYLVIA KLAYMINC: Uh-huh. Sure.

MR. MEL WEINBERG: Well, you should be back in business within a few months.

MRS. SYLVIA KLAYMINC: Well, it would be nice.

MR. MEL WEINBERG: Ah?

MRS. SYLVIA KLAYMINC: It would be nice.

MR. MEL WEINBERG: Then you can go back selling 'em again.

MRS. SYLVIA KLAYMINC: No, I won't be able to do it here.

MR. MEL WEINBERG: Why?

[8] MRS. SYLVIA KLAYMINC: Ah, you're not allowed to here, I mean in the U.S.

MR. MEL WEINBERG: Well, we'll ship you to Europe, then.

MRS. SYLVIA KLAYMINC: Well, that's not a bad idea either. [LAUGHS].

MR. MEL WEINBERG: That's what we'll do.

MRS. SYLVIA KLAYMINC: Well, we'll see what the future brings. But there's a tremendous market for it.

MR. MEL WEINBERG: No kidding.

MRS. SYLVIA KLAYMINC: Oh, sure.

MR. MEL WEINBERG: I don't know anything about this business. See, we just owned the casinos and all the—and the stores and the casinos.

MRS. SYLVIA KLAYMINC: Right.

[9] MR. MEL WEINBERG: And our problem we're going in is the high-rollers come in, you know, and they're on comp[?] and they want to buy their girlfriend a bag. Boy, it's not bad that they owe us money from what they lost or they beat us; then they come in and they buy a two- three-hundred-dollar bag and they sign for it and they never pay.

MRS. SYLVIA KLAYMINC: Oh, I see. Oh, my.

MR. MEL WEINBERG: You've been to Vegas. You know what it's like.

MRS. SYLVIA KLAYMINC: Sure.

MR. MEL WEINBERG: So this is what we're knocking 'em out for.

MRS. SYLVIA KLAYMINC: I see. I see.

MR. MEL WEINBERG: And then we have other stores throughout the country, but—

MRS. SYLVIA KLAYMINC: Uh-huh, but not the U.S.

[10] MR. MEL WEINBERG: We have two casinos only in the U.S. We try to stay—and those stores are sold outright. You get big money for them.

MRS. SYLVIA KLAYMINC: I see.

MR. MEL WEINBERG: The other, the overseas, you own the stores. You got a captive audience.

MRS. SYLVIA KLAYMINC: Sure.

MR. MEL WEINBERG: And like we got the one in Monte Carlo—

MRS. SYLVIA KLAYMINC: Oh, uh-huh.

MR. MEL WEINBERG: And that's a captive audience. That's one of the best ones out.

MRS. SYLVIA KLAYMINC: Sure.

MR. MEL WEINBERG: They buy anything.

[11] MRS. SYLVIA KLAYMINC: How about Puerto Rico?

MR. MEL WEINBERG: We have one down there.

MRS. SYLVIA KLAYMINC: Uh-huh, because there is also a captive audience.

MR. MEL WEINBERG: Well, Puerto Rico is—the islands are dying down in gambling now. It's not going that great. Puerto Rico we got problems with the muggings, papers played it up, St. Martine people don't care to travel, it's too expensive, the cruise-ship business is fallen off a touch—

MRS. SYLVIA KLAYMINC: How about a place like Curacao?

MR. MEL WEINBERG: No, we're in St. Martine, Barbados—trying to think of some of the other islands there.

MRS. SYLVIA KLAYMINC: Aruba?

MR. MEL WEINBERG: Aruba we have a place. See, but I think in [12] Aruba you got the Holiday Inn there.

MRS. SYLVIA KLAYMINC: How about Yugoslavia? Are you in Yugoslavia?

MR. MEL WEINBERG: Yugoslav was owned by Penthouse and was closed down.

MRS. SYLVIA KLAYMINC: Oh.

MR. MEL WEINBERG: Yeah, that was closed down. The government took his license away because of financial—they wanted too much, you know. It's a—

MRS. SYLVIA KLAYMINC: The cut[?], you mean?

MR. MEL WEINBERG: It's a Communist-run country.

MRS. SYLVIA KLAYMINC: I know.

MR. MEL WEINBERG: And I was speaking to Gucione and he told me that they just demanded too much.

[13] MRS. SYLVIA KLAYMINC: You know, it's a funny thing: coming down here the last time, I was coming here alone and I was sitting next to a lady, very

lovely lady, and she was talking to me and talking to me—Bob Guccione's aunt.

MR. MEL WEINBERG: No kidding.

MRS. SYLVIA KLAYMINC: And she says he's such a good guy. I mean, he really has treated her very well.

MR. MEL WEINBERG: Yea, a lot of people would argue that with you.

MRS. SYLVIA KLAYMINC: Well, she says, her husband—I think it's her husband's nephew, I believe, and her husband passed away, and she was telling me—

MR. MEL WEINBERG: He built some empire up. He built some empire up with that magazine.

MRS. SYLVIA KLAYMINC: And how. And how. Good for him. He didn't [14] take anything from, you know, the average person and he gave a very nice product. I enjoy reading *Penthouse*; so a lot of people do, too.

MR. MEL WEINBERG: But you know, I meant to ask Sol, 'cause I wanted to meet your son, you know, 'cause he's going to be active in it, right?

MRS. SYLVIA KLAYMINC: Well, I would imagine he's going to help him, you know, and—

MR. MEL WEINBERG: Well, according to Sol, he said he's going to run the production.

MRS. SYLVIA KLAYMINC: Yeah, yup.

MR. MEL WEINBERG: So—

MRS. SYLVIA KLAYMINC: He's going to—he does everything, you know, purchasing and all that, too. I mean, there's an awful lot, you know, that goes into the whole [15] thing. But you know, that's up to them. I'm strictly an outsider when it comes to that. I mean, as far as production and things like that, I was active in the business but not in that part of it.

MR. MEL WEINBERG: What, the sales part?

MRS. SYLVIA KLAYMINC: In sales, yes. Yes. You know, the little home kind of sales [LAUGHS].

MR. MEL WEINBERG: That's the best type.

MRS. SYLVIA KLAYMINC: Oh, I enjoyed it. I enjoyed it.

MR. MEL WEINBERG: You know, there's more money in that. I was speaking to a guy that came up to sell us some shirts, right? And he was telling me that his sister sells them in Pittsburgh and does seven thousand dollars a week.

MRS. SYLVIA KLAYMINC: What kind of shirts?

[16] MR. MEL WEINBERG: The Polo's.

MRS. SYLVIA KLAYMINC: Oh, the Polo's. I had a friend who was doing that.

MR. MEL WEINBERG: I couldn't believe it. I says, "Seven thousand a week?"

MRS. SYLVIA KLAYMINC: I didn't think you could make that much.

MR. MEL WEINBERG: Yeah, he says that's what she's making. I mean, he could be lying to me.

MRS. SYLVIA KLAYMINC: I could be. Maybe he wanted to push it, you know.

MR. MEL WEINBERG: And you know, it's hard to believe, seven thousand. He was telling me seven thousand a week.

MRS. SYLVIA KLAYMINC: I don't think that's—I don't think that's possible, really, but—

[17] MR. MEL WEINBERG: He also told us in the farmers' market down in Florida that they did anywhere from five to twelve thousand a weekend.

MRS. SYLVIA KLAYMINC: On the shirts?

MR. MEL WEINBERG: Yeah.

MRS. SYLVIA KLAYMINC: I don't know.

MR. MEL WEINBERG: I mean, I'm not in the retail, so you know, they can tell me anything, but that sounds like a lot of shirts.

MRS. SYLVIA KLAYMINC: Right. It is a lot of shirts. I can't see, but look, anything is possible, unless he was looking to impress you.

MR. MEL WEINBERG: He's not impressing me because we have our own plant in Guatemala that knocks 'em out.

MRS. SYLVIA KLAYMINC: The Polo's.

[18] MR. MEL WEINBERG: Yeah. We have our own plant. In fact, we just got a—I'm looking for an embroiderer down here, 'cause the guy we got's in Jersey, New York, and that means I got to ship all the stuff up there.

MRS. SYLVIA KLAYMINC: You mean, to put that little gimmick on?

MR. MEL WEINBERG: Yeah.

MRS. SYLVIA KLAYMINC: —gimmick on?

MR. MEL WEINBERG: Yeah. But apparently that's what they do. The housewives make the big money.

MRS. SYLVIA KLAYMINC: Sure. Sure. They have—

MR. MEL WEINBERG: What did you have, like, Tupper parties?

MRS. SYLVIA KLAYMINC: Well, right. They don't have the overhead, you know. They make the parties, they serve [19] coffee and cake, and the women come and buy.

MR. MEL WEINBERG: Well, I guess on your end all the—

MRS. SYLVIA KLAYMINC: Oh, no, I didn't do that. I sold to people who did that, you know what I mean?

MR. MEL WEINBERG: Oh. Oh, you had all the housewives going out for you.

MRS. SYLVIA KLAYMINC: No, not for me. They would come and buy my goods and do what they wanted with it.

MR. MEL WEINBERG: Oh, then they went out and sold them.

MRS. SYLVIA KLAYMINC: Then they went out and sold it. But that's something I wouldn't touch now, not in the U.S.

MR. MEL WEINBERG: All right, we could arrange it for overseas for you. Well, you'll be active in the business anyway from the way Sol spoke.

[20] MRS. SYLVIA KLAYMINC: Oh, well, definitely, definitely. I mean, listen, I know how to keep books and

things like that, and I've been active with him, you know, for about ten years now, and I'm getting a little tired of just lounging around doing nothing, you know, except keeping house, which I haven't done in years. So I'll definitely get back into something, but in the meantime it's like a little vacation for me, so you know, it's not so terrible. But I haven't been a housewife in a long time, and I am now for a while.

MR. MEL WEINBERG: Look, we'll have you back inside in a little while.

MRS. SYLVIA KLAYMINC: Okay, sounds good.

MR. MEL WEINBERG: And everything will, you know, get back in the swing.

MRS. SYLVIA KLAYMINC: Sure. You're—

[21] MR. MEL WEINBERG: Your husband's quite a fellow.

MR. MEL WEINBERG: Oh, yes. Oh yes. Of course I am very subjective about it. I mean, having lived with him for a good many years—but I've been told that by a lot of people, and he's a hustler, he's a go-getter, and he gets it done.

MR. MEL WEINBERG: I told him up there, you know, that that lawsuit he's got, you know, that at least be smart enough to bury things that he—that, you know, they don't come in.

MRS. SYLVIA KLAYMINC: Yeah, well, that's—I don't think he has any problem there.

MR. MEL WEINBERG: Well, you know, I tried to explain to him, if he has any cash or anything, you know, that they can come after him for that. You know, like even the house—to put it in someone else's name.

[22] MRS. SYLVIA KLAYMINC: No, well, I don't think he has any problem with that. You know, when it comes to finances, it's all his headache; I only do the minimal things around the house.

MR. MEL WEINBERG: Well, no—well, I'm trying to bring out, though, that once this goes in, we're pouring

money in and all like that, it's going to be done overseas so they can't touch it there—

MRS. SYLVIA KLAYMINC: That's the nice part of it.

MR. MEL WEINBERG: —right, but what he's got to be careful of—anything he brings into the States, that they don't get wise, because they'll be looking for. . .

MRS. SYLVIA KLAYMINC: You mean, that stuff? He's not going to—

MR. MEL WEINBERG: No, no. No, no, I'm talking about money.

MRS. SYLVIA KLAYMINC: Oh, oh, I see what you mean. Listen, as far [23] as that's concerned, there's always a hiding place.

MR. MEL WEINBERG: Well, that's what I'm saying: He's got to be smart on the hiding place.

MRS. SYLVIA KLAYMINC: Oh, of course. I don't think he'll have to worry about that, believe me.

MR. MEL WEINBERG: Well, you know, we washed millions and millions of dollars.

MRS. SYLVIA KLAYMINC: Right.

MR. MEL WEINBERG: —a day, and I told him you can never be too smart.

MRS. SYLVIA KLAYMINC: No, nobody can.

MR. MEL WEINBERG: You got to be careful as can be.

MR. SYLVIA KLAYMINC: Of course.

[24] MR. MEL WEINBERG: You know, some people think safe deposit boxes are safe; they're not really safe either.

MRS. SYLVIA KLAYMINC: No, that's true, but you know, there's such a thing as a little home safe and things like that.

MR. MEL WEINBERG: Yeah, that's the safest thing out.

MRS. SYLVIA KLAYMINC: Well, we used to, you know, years back—we had a home in Westbury, and we had a safe in the wall, and it was a nice little gadget to

have—not that we had much to put into it, but you know, the few pieces of jewelry and things like that that I had. It was very convenient having it there. Of course when we left we didn't take it with us, naturally (it was in the wall), but it was an added incentive to the people we sold the house to. They were thrilled when they saw it, you know. It's a nice little thing to have, and it's fireproof.

* * * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[Title Omitted in Printing]

TRANSCRIPT OF TELEPHONE CALL
SOL N. KLAYMINC AND MEL WEINBERG

TAPE #19

4/9/83, 1:45 P.M.

* * * *

[28] MR. MEL WEINBERG: All right.

MR. SOL N. KLAYMINC: Okay, so meanwhile I . . .

MR. MEL WEINBERG: But I want—can he get us a guarantee of a year's supply in this?

MR. SOL N. KLAYMINC: Oh sure.

MR. MEL WEINBERG: That's what we want set up.

MR. SOL N. KLAYMINC: Well if you want a setup like backup, you know. . .

MR. MEL WEINBERG: Yeah.

MR. SOL N. KLAYMINC: In other words, we'll give 5,000, I want a backup a month from now . . .

MR. MEL WEINBERG: Are you—well, you've got to tell me how much we need a month.

MR. SOL N. KLAYMINC: Okay.

[29] MR. MEL WEINBERG: All right?

MR. SOL N. KLAYMINC: That depends how much you want to order a month.

MR. MEL WEINBERG: Well, how much we need enough to knock out and 5,000 bags I need, what do you want for yourself?

MR. SOL N. KLAYMINC: No, I don't want—I'm not going to make it for myself. Cause I can't take it in here. I wouldn't take a chance.

MR. MEL WEINBERG: But you could ship to other countries.

MR. SOL N. KLAYMINC: I—I could, but . . .

MR. MEL WEINBERG: Yeah.

MR. SOL N. KLAYMINC: But I don't want to do it on my own, unless you give me help or something like that.

MR. MEL WEINBERG: All right. We'll give you help to get it out then.

[30] MR. SOL N. KLAYMINC: Well, then why don't you want to do it? I'd just as well you make the money and let me make the difference. So you'll make the big bread. If you got the connections to ship it out and have the customers for it I'll let you make that difference in the profit.

MR. MEL WEINBERG: All right. Fair enough.

MR. SOL N. KLAYMINC: I'm not that greedy.

MR. MEL WEINBERG: Fair enough.

MR. SOL N. KLAYMINC: I just want to know I got a little bit on each bag I make.

MR. MEL WEINBERG: All right, so you figure how much you need for 5,000 bags a month.

MR. SOL N. KLAYMINC: We're talking about material.

MR. MEL WEINBERG: Yeah.

[31] MR. SOL N. KLAYMINC: Five thousand a month, you need maybe 2,000 yards.

MR. MEL WEINBERG: A month.

MR. SOL N. KLAYMINC: Yeah.

MR. MEL WEINBERG: All right. That's what we got to get from Jerry.

MR. SOL N. KLAYMINC: Okay.

MR. MEL WEINBERG: We want to get 3 months, 3 months in advance.

MR. SOL N. KLAYMINC: Three months in advance you've got to get, right.

MR. MEL WEINBERG: So you need 6,000, we'll say 8,000 yards.

MR. SOL N. KLAYMINC: Right.

MR. MEL WEINBERG: Okay? And then you need, after that, 2,000 every month.

MR. SOL N. KLAYMINC: Right. But they won't give you 2,000.

[32] MR. MEL WEINBERG: You got to take how many?

MR. SOL N. KLAYMINC: Five thousand's the minimum they'll make.

MR. MEL WEINBERG: So you take 5,000 every two—four—uh, 2 months.

MR. SOL N. KLAYMINC: Every 2, 3 months you take—one time you wait two months, the next time you wait three months.

MR. MEL WEINBERG: You don't have to wait nothing, you'll be using your material.

MR. SOL N. KLAYMINC: Okay.

MR. MEL WEINBERG: All right?

MR. SOL N. KLAYMINC: Yeah. So the first shot of 5,000 I'll go along with George in. And I'll help him make half of it.

MR. MEL WEINBERG: Yeah.

MR. SOL N. KLAYMINC: This way you could be sure that you got your [33] merchandise.

MR. MEL WEINBERG: All right.

MR. SOL N. KLAYMINC: I'll have him cut half to send me, and half he'll make with his people.

MR. MEL WEINBERG: Fair enough.

MR. SOL N. KLAYMINC: Okay?

MR. MEL WEINBERG: Fair enough.

MR. SOL N. KLAYMINC: Good. So I can put that down as an order Mel?

MR. MEL WEINBERG: Yeah.

MR. SOL N. KLAYMINC: All right, then I'll talk—I'll talk to him now. He's going to say Sol, how can I commit myself for 5,000 pieces? I need a little bread. Okay?

[34] MR. MEL WEINBERG: No. I will not give him a—bread—if—let me meet with George first. Maybe if I see the guy is a—is a—you know, he's like you . . .

MR. SOL N. KLAYMINC: Listen to me, listen.

MR. MEL WEINBERG: Yeah.

MR. SOL N. KLAYMINC: If you give me something—if I tell him George I got 10 I'm holding for you, the moment you ship me 500 bags you got more money. You ship me another 500 bags, you got more money. I want to assure him. These guys'll work with me because they worked with me before. 10,000. . .

MR. MEL WEINBERG: I will put any amount of money they want in escrow with attorneys.

MR. SOL N. KLAYMINC: Okay, but you don't understand. They got to pay the payroll. They got to have expenses. They got to pay for the material, they got to pay for the printing.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[Title Omitted in Printing]

TRANSCRIPT OF TELEPHONE CALL
MR. MEL WEINBERG (IN CALIFORNIA)
RETURNS MR. BARRY KLAYMINC'S CALL

TAPE 30

4/12/83, 6:48 P.M.

* * * *

[9] MR. MEL WEINBERG: —yeah—

MR. BARRY KLAYMINC: —3420.

MR. MEL WEINBERG: —3420.

MR. BARRY KLAYMINC: Okay, and I spoke to him also; I'll speak to him again and I'll tell him it'll be, you know, sometime next week also.

MR. MEL WEINBERG: Yeah, what—how much stuff has he got there, about?

MR. BARRY KLAYMINC: Well, you got the shelving, you got any of the machines, you know, we got out earlier—you know, really, I can't tell you. I think I could get a better estimation from Larry on really what he's got out there, 'cause he—what's that?

MR. MEL WEINBERG: It makes no difference, but I'll need a big truck, right?

[10] MR. BARRY KLAYMINC: Oh, yeah, definitely, 'cause you know, those boxes alone, which, you know—you got a lot of leather in those boxes, you know—that'll take up a lot of, you know, room, of course.

MR. MEL WEINBERG: Any of the stuff for the Louis Vuitton there?

MR. BARRY KLAYMINC: What?

MR. MEL WEINBERG: Any of the stuff for the pocketbooks—?

MR. BARRY KLAYMINC: Well, the machinery, of course, will be used for that, but the leather is that softer leather, you know, we used, you know, for those other bags. But you know, the other machinery we definitely can use, you know, for the L. program.

MR. MEL WEINBERG: All right, now, long as I got you on the phone, all right—?

MR. BARRY KLAYMINC: Yeah.

[11] MR. MEL WEINBERG: —you're going to be working for Pop, right?

MR. BARRY KLAYMINC: Yeah, sure.

MR. MEL WEINBERG: All right, what is your capacity? You know, we get to know each other.

MR. BARRY KLAYMINC: As far as what?

MR. MEL WEINBERG: Well, what did you do before for Pop?

MR. BARRY KLAYMINC: Oh well, like, everything from fixing machines to working with the biggest buyers, I mean, you know, selling-wise. I mean, I ran the whole gamut. I started out, you know, literally sweeping the floors, and you know, I was—you know, supervised, worked on machines, fixed machines, went out selling—you know, the whole deal. So there's no part of the business I don't know—put it that way.

MR. MEL WEINBERG: Now, are you able to take over for us and make [12] the L's down in Haiti?

MR. BARRY KLAYMINC: Oh, no problem.

MR. MEL WEINBERG: All right, and you know all about how to make 'em?

MR. BARRY KLAYMINC: Oh, yeah.

MR. MEL WEINBERG: And you did it up here?

MR. BARRY KLAYMINC: Oh, yeah.

MR. MEL WEINBERG: Oh, you did it up here, so you know about 'em.

MR. BARRY KLAYMINC: Yeah, no problem.

MR. MEL WEINBERG: All right, 'cause I didn't know that you did it up here or not.

MR. BARRY KLAYMINC: In fact, you know, comes out I'll look forward to doing the cutting and stuff on that, 'cause [13] you know, I used to get a little enjoyment out of, you know, getting the best, you know, out of it that you could, you know, the best yield, if you know what I'm saying, and oh yeah, you know, I mean, I'm definitely fully versed on, you know, the whole operation and, you know, how everything goes.

MR. MEL WEINBERG: Well, I didn't know if you were involved the last time in it.

MR. BARRY KLAYMINC: Well, yeah. I mean, was really more out in sales. I mean, I've basically been more out in sales, but I know the whole production. I mean, I had like, you know, four, five years in the production end of it also, so you know, I really—I know, you know, machines from "A" to "Z" so—

MR. MEL WEINBERG: So you know how to make the cut and—?

MR. BARRY KLAYMINC: Oh, yeah.

[14] MR. MEL WEINBERG: And you know the material we need for the L's?

MR. BARRY KLAYMINC: Oh, yeah. Yeah.

MR. MEL WEINBERG: So I mean—

MR. BARRY KLAYMINC: I don't think, Mel, once—you'll have no concern with, you know, like, quality and once we get rolling, you know, the, you know, expediting it, and you know, really getting things moving. I mean, I think, you know, you'd be very, very pleased.

MR. MEL WEINBERG: That's all. I mean, you know, I'm going to meet with you.

MR. BARRY KLAYMINC: Right. Yeah, I'd like to meet you also.

MR. MEL WEINBERG: Oh, yeah, yeah. I thought Pop was bringing you up the last time.

MR. BARRY KLAYMINC: What?

[15] MR. MEL WEINBERG: Pop was supposed to be bringing you up the last time.

MR. BARRY KLAYMINC: Oh, was he? I don't know. He didn't mention to me.

MR. MEL WEINBERG: Yeah, I told him to bring you up. Listen—

MR. BARRY KLAYMINC: All right.

MR. MEL WEINBERG: —I'd like to meet you. But I mean, what I'm worried about is that anything happens to Pop, you know what to do, where to order, get the stuff, and—

MR. BARRY KLAYMINC: Right. Oh, no, no, I mean, you know, God forbid, of course, if that would ever happen, I mean, I'd fill right in, and I mean, I'd jump right in. I mean, I'm—you know, you're not talking to a greenhorn here.

MR. MEL WEINBERG: All right, you know, I mean, the main thing [17] is that you know how to make the L's, that you did before.

MR. BARRY KLAYMINC: Yeah, definitely, definitely.

MR. MEL WEINBERG: So I mean you definitely made 'em before, then.

MR. BARRY KLAYMINC: Oh, yeah. Well, you know, I was involved with it, so I mean, I knew the whole operation, you know. It's not—you know, in the regular business we were in, the other leather bags, which were probably even more complicated 'cause we dealt with so many more styles and variations and everything else—

MR. MEL WEINBERG: I'm more interested in the L.V.'s.

MR. BARRY KLAYMINC: Yeah, I understand that, but I'm just saying, if that came fairly easy to me, all the other stuff, this stuff is a breeze. It really is, you know. I mean—

[18] MR. MEL WEINBERG: Well, what I mean is did you ever do this before? That's what I'm trying to find out.

MR. BARRY KLAYMINC: What do you mean, did we ever do it?

MR. MEL WEINBERG: I know Pop did the L.V.'s.

MR. BARRY KLAYMINC: Oh, yeah, well, you know, I've been with him for a while. I mean—

MR. MEL WEINBERG: Yeah, so you know the whole operation.

MR. BARRY KLAYMINC: Oh, yeah, sure, sure.

MR. MEL WEINBERG: That's what I was trying to find out.

MR. BARRY KLAYMINC: Oh, yeah, from the initial laying up of fabric to the final packing of the merchandise.

MR. MEL WEINBERG: In fact, I spoke to your mother and she was telling me how she sold them.

[19] MR. BARRY KLAYMINC: Yeah.

MR. MEL WEINBERG: I was surprised.

MR. BARRY KLAYMINC: Well, she was doing a nice job. Of course, you know, we ran into a little trouble...

MR. MEL WEINBERG: Aaah, the hell with it. You know how to sell 'em too, then?

MR. BARRY KLAYMINC: Oh, yeah.

MR. MEL WEINBERG: Hah?

MR. BARRY KLAYMINC: Yup.

MR. MEL WEINBERG: What, you were selling them too?

MR. BARRY KLAYMINC: Everything. Like I told you, from "A" to "Z" I was involved, you know. It's—you know, and then I would run out like in the afternoons and go out selling. Of course when I was selling, [20] I was, you know, basically selling our, you know, regular merchandise out of the showroom, you know. But oh, yeah, I was involved. I'm familiar, you know. All I have to do is tell you I'm familiar with the entire process, and you know, it's my feeling, of course, my father has a number of good years left in him anyway. I mean, I don't want to think anything otherwise (put

it that way), because I know if my father ever, you know, retired, he'd go nuts, you know. And that's how he would get sick. You know, he has to be busy with something at least three, four days a week, if you know what I'm saying.

MR. MEL WEINBERG: Right.

MR. BARRY KLAYMINC: And you know, of course, you know, God forbid if anything should happen, of course, you know, I'm there and, you know, I'm going to be there. But I don't want to even look at any other possibilities. I know my father's, you know, going [21] to be—he really wants to work a good, you know, another four or five years to, you know, give good, good work, and then maybe, you know, he'll really, like, semi-retire or . . .

MR. MEL WEINBERG: You got a middle initial, Barry?

MR. BARRY KLAYMINC: Yeah, D.

MR. MEL WEINBERG: What's that stand for?

MR. BARRY KLAYMINC: Dean.

MR. MEL WEINBERG: Oh, Dean?

MR. BARRY KLAYMINC: Yeah.

MR. MEL WEINBERG: Barry Dean. That's a good name.

MR. BARRY KLAYMINC: Yeah. Yeah.

MR. MEL WEINBERG: How do you spell your last name?

[22] MR. BARRY KLAYMINC: K-L—

MR. MEL WEINBERG: K-L—

MR. BARRY KLAYMINC: —A-Y—

MR. MEL WEINBERG: —A-Y—

MR. BARRY KLAYMINC: —M-I-N-C. You know the whole—you know the address and everything, and—okay, and he also mentioned to me that, you know, when we want to make that pickup that I'll go along with your men or whatever, you know, with the—

MR. MEL WEINBERG: Oh, yeah, that's what I want to go over with you. All right.

MR. BARRY KLAYMINC: Yeah, no problem with that.

MR. MEL WEINBERG: All right, well, we're letting George make the pickup, all right?

[23] MR. BARRY KLAYMINC: Right.

MR. MEL WEINBERG: He know I would go with you. I'll send one of my drivers with the cash.

MR. BARRY KLAYMINC: Okay, no problem.

MR. MEL WEINBERG: Well, probably it's for your protection too.

MR. BARRY KLAYMINC: Right.

MR. MEL WEINBERG: All right? And then they'll take it and they'll go right to the plane. We'll have a plane at the airport.

MR. BARRY KLAYMINC: Fine. No problem.

MR. MEL WEINBERG: All right? We got to go to Jersey.

MR. BARRY KLAYMINC: Yeah, yeah, he's out in Jersey. I don't have his address here. I'll get that from my father.

[24] MR. MEL WEINBERG: Oh. I mean, is the place a safe place, though?

MR. BARRY KLAYMINC: What's that?

MR. MEL WEINBERG: Wlel, where they're going, is it a safe place with the house or factory, or what?

MR. BARRY KLAYMINC: I'm pretty sure, you know, it's a factory, but as far as I know, it's safe. I mean, there's never been any screw-ups before, so—

MR. MEL WEINBERG: All right—

MR. BARRY KLAYMINC: —you know—

MR. MEL WEINBERG: —that's all. I don't want to get you involved with it, you know.

MR. BARRY KLAYMINC: No, there won't be any trouble. I mean, you know, this guy's, you know, a good man, and you know, there really won't be any problem.

[25] MR. MEL WEINBERG: My driver will be up there. I told your father it'll be May 2nd.

MR. BARRY KLAYMINC: For May 2nd, right, yeah. That he mentioned to me, so that's like about three weeks, let's say? All right, so, you know, we'll plan on it for that, then, but in the meantime, which is important also, of course, you know, to get this stuff—and he mentioned to me that you had, you know—there was, like, a guy coming in that was doing some of the buying of the machinery and stuff, you know—

MR. MEL WEINBERG: Yeah, but I told him not to say nothin', you know.

MR. BARRY KLAYMINC: Well, you know, to me, I mean, it's—no, no, I'm talking about my father.

MR. MEL WEINBERG: Yeah, I told him not to tell anyone this, because we—

[26] MR. BARRY KLAYMINC: No, no, he didn't really tell—he just said, "Look, he's taking care of it," 'cause you know, I was concerned 'cause you had these guys like all over the place.

MR. MEL WEINBERG: That's all right. Let 'em go all over.

MR. BARRY KLAYMINC: What?

MR. MEL WEINBERG: Let 'em go all over.

MR. BARRY KLAYMINC: All right, but if—you know, I was getting a little annoyed, but if I know it's your guys, I don't say anything. I mean, it's fine. Larry takes care of it with the—

MR. MEL WEINBERG: It's got to look legit.

MR. BARRY KLAYMINC: What?

MR. MEL WEINBERG: It's got to look legit, you know, that—

[27] MR. BARRY KLAYMINC: Okay, but Mel, let me tell you, at least when my father mentioned to me that, you know, these guys are, you know, most likely your guys there, it made me feel a heck of a lot better. I mean, this was, you know—

MR. MEL WEINBERG: Oh. You know, technically you can't stop 'em.

MR. BARRY KLAYMINC: What?

MR. MEL WEINBERG: Technically you can't stop 'em.

MR. BARRY KLAYMINC: What do you mean, you can't stop 'em?

MR. MEL WEINBERG: Well, if C.I.T. wants to take the machines out, they can take 'em.

MR. BARRY KLAYMINC: Of course they can take 'em. What are they going to—? They know they're going to be worthless unless they let, you know—our man, unless they let this guy basically liquidate the stuff. You know, what is it? They have knowledge of [28] who to sell the machinery to and stuff? You know, the smartest thing is for them to do it this way. But as long as I know, you know, I mean, I got a little annoyed—you know, I went in and I had a few personal items, you know, like in my desk, you know, to still clean out and I got these guys rummaging around, like, in my belongings and stuff.

MR. MEL WEINBERG: You know, they got to make it look good.

MR. BARRY KLAYMINC: Yeah, as long as—look, that made me a lot more pleased that I know that, you know, at least I know, you know, that, you know—what's happening 'cause, you know—whatever, you know, is going out there, you know. So—

MR. MEL WEINBERG: Yeah, no, we had to make it look good.

MR. BARRY KLAYMINC: All right, fine, as long as I'm—I'm glad—

MR. MEL WEINBERG: All those machines we put and shipping right out.

[29] MR. BARRY KLAYMINC: Good. Okay, that's important, because, you know, you went over it with my father, I guess, you know, like what you really felt, you know, he needed, so you know, that's important. All right.

MR. MEL WEINBERG: And there's no problem whatsoever.

MR. BARRY KLAYMINC: Okay. Good.

MR. MEL WEINBERG: Okay?

MR. BARRY KLAYMINC: Very good.

MR. MEL WEINBERG: It's good speaking to you.

MR. BARRY KLAYMINC: Very good speaking to you, and have a very good stay out there, and I hope to meet you when you get back.

MR. MEL WEINBERG: Oh, I definitely will next time I'm in New York. We'll get together.

REBOUL, MACMURRAY, HEWITT,
MAYNARD & KRISTOL
45 Rockefeller Plaza
New York, N.Y. 10111

April 13, 1983

John Kildebeck, Esq.
Head Deputy District Attorney
Complaint Section
210 West Temple Street
Los Angeles, California 90012

U.S.A. ex rel. Vuitton et Fils S.A.
v. Karen Handbag, et al.

Dear John:

I am writing to confirm our telephone conversation on April 12, 1983, regarding the above-entitled federal proceeding. I informed you that I have been specially appointed by United States District Judge Charles L. Brieant to represent the United States in connection with the investigation and prosecution of a number of individuals who, in conspiracy one with the other, are willfully violating a permanent injunction prohibiting them from dealing in counterfeit Louis Vuitton merchandise. (A copy of that order is enclosed. The original is being kept under seal, so I therefore ask that you treat it confidentially.)

I called you at the suggestion of Assistant United States Attorney William J. Landers to discuss with you the possible application of West's Ann. Penal Code §§ 632 and 633 to the videotaping and tape recording by federal undercover agents in a hotel room in Los Angeles in connection with the aforesaid investigation. You confirmed what Bill Landers told me, namely that it was no problem.

Nonetheless, since the activities in Los Angeles of some of the persons under federal investigation would appear to violate West's Ann. Penal Code §§ 181, 351, 484 and

542, among others, to remove any question as to the possible application of Penal Code § 632 to the activities of my undercover agents, you requested that so much of the federal investigation as is being conducted in Los Angeles be made at your direction. I agreed to that.

After the federal investigation is completed, I will discuss with you whether the interests of justice indicate that the evidence obtained in Los Angeles, if any, should be used in support of a federal or state proceeding.

I would appreciate your confirming the foregoing by signing a copy of this letter in the place provided and returning it to my waiting messenger.

Finally, on a personal note, many thanks for all the cooperation on such short notice.

Very truly yours,

J. JOSEPH BAINTON

mb

BY HAND

CONFIRMED:

/s/ John Kildebeck 4/14/83

JOHN KILDEBECK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[Title Omitted in Printing]

TRANSCRIPT OF VIDEO TAPE

TAPE 2

4-14-83, 9:31 A.M. to 10:20 A.M.

Sol Klayminc and Gerald J. Young

* * * *

[32] MR. SOL KLAYMINC: He's paranoid about it.

MR. GERALD YOUNG: I got set up, Mel, in one of the sweetest scams there ever was from a guy I knew for eleven years. Say Sol—I know Sol eleven years. He introduced me to a guy like you who he has known for five years.

MR. MEL WEINBERG: Yeah.

MR. GERALD YOUNG: Okay? And I was selling him some merchandise. Not in this program, another business. Shows me an attache case full of el greeno; we drive down to the warehouse, the back of the deuce- and a half truck is loaded with marshals.

MR. MEL WEINBERG: Ah yeah, but that's a different type. Let me explain something to you, all right. You're a smart guy, and you've been around. All right?

[33] MR. GERALD YOUNG: Couple of years.

MR. MEL WEINBERG: Okay. Number one, you're not doing a federal rap.

MR. GERALD YOUNG: That is correct.

MR. MEL WEINBERG: Okay, number two, you're doing—

MR. GERALD YOUNG: Civil crimes.

MR. MEL WEINBERG: Civil crime. No one is going to lay out the bread that we're laying out for a civil crime to get you. You're not that important, Jerry.

MR. GERALD YOUNG: I agree. I agree.

MR. MEL WEINBERG: Okay. You're not that important, all right? Let's call a spade a spade.

* * * *

[40] MR. GERALD YOUNG: Mel, where is this merchandise going to wind up?

MR. MEL WEINBERG: The stuff, after he finishes?

MR. GERALD YOUNG: Yeah.

MR. MEL WEINBERG: You mean the finished product?

MR. GERALD YOUNG: Yeah.

[41] MR. MEL WEINBERG: Europe.

MR. GERALD YOUNG: In Europe?

MR. MEL WEINBERG: Yeah.

MR. GERALD YOUNG: Ah—do you have chains of stores in Europe to move the merchandise?

MR. MEL WEINBERG: Let me explain to you our operation.

MR. GERALD YOUNG: Are they ladies or mens or both?

MR. MEL WEINBERG: Both. Let me explain our operation. You apparently are a high roller so you know Vegas. All right. In Vegas, when you have a casino a hotel, you sell the concessions.

[42] MR. GERALD YOUNG: Right.

MR. MEL WEINBERG: In Europe, they don't sell the concessions; we own them, all right? And we make—out of certain countries that we're in, we got to put so much money into the country, all right? So, we have quite a few stores we can put out.

MR. SOL KLAYMINC: It gets sold.

MR. MEL WEINBERG: All right. Now—

MR. GERALD YOUNG: What else can you use for these stores?

MR. MEL WEINBERG: We can use any type of men's stuff.

MR. GERALD YOUNG: Mens?

[43] MR. MEL WEINBERG: Mens, womens. I'm not in the garment business. I don't know a fuckin' thing about it, all right? I found—I'm learning—I'm getting educated in this business. I wouldn't buy anything in a fuckin' department store. I told my wife if she goes out and spends any fuckin' money on a fuckin' [INAUDIBLE]—

MR. GERALD YOUNG: Do you live in Florida?

MR. MEL WEINBERG: I live in Florida. Well—

MR. SOL KLAYMINC: Not far from me.

MR. MEL WEINBERG: Well—I travel most of the time. You got something on your mind, spit it out.

MR. GERALD YOUNG: I just want to know one thing. Is West your original name?

* * * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[Title Omitted in Printing]

TRANSCRIPT OF VIDEO TAPE

TAPE 4

4-14-83, 4:34 P.M. to 6:27 P.M.

SOL KLAYMINC

DAVE ROCHMAN

* * * *

[155] MR. DAVE ROCHMAN: See, that's American Airlines' hub, Dallas, Fort Worth/Dallas airport?

MR. MEL WEINBERG: But we're not goin'—we're goin' Delta.

MR. GUNNAR ASKELUND: Well, they stop there, too.

MR. DAVE ROCHMAN: Oh?

MR. MEL WEINBERG: We don't get back to West Palm until like 11:00 o'clock.

MR. GUNNAR ASKELUND: You lose three hours going back.

MR. SOL KLAYMINC: You want to stay with him?

MR. MEL WEINBERG: Yeah. I got a few things—

MR. SOL KLAYMINC: Could I interest you uh—could I? You don't mind?

[156] MR. MEL WEINBERG: No. Go ahead.

MR. SOL KLAYMINC: On the eel stuff—I'm in an area where my wife could handle that. She handles stuff like that. She sells regular goods, you know.

MR. DAVE ROCHMAN: No problem.

MR. SOL KLAYMINC: Would you care if uh—

MR. DAVE ROCHMAN: No problem.

MR. SOL KLAYMINC: —if you send her—

MR. DAVE ROCHMAN: No problem at all.

MR. SOL KLAYMINC: Should I call you or do you just want to send her—

MR. DAVE ROCHMAN: I'll give all the information to Mel.

[157] MR. SOL KLAYMINC: Okay. This would be a good way to keep her busy, get her out of my hair.

MR. MEL WEINBERG: You mean she's going to stop selling the LVs and now go sell the eels?

MR. SOL KLAYMINC: Well, that's—she's a little scared of, you know, but, uh eel or Fendi, she's not afraid of.

MR. GUNNAR ASKELUND: How you going to stop this stuff from—selling like hotcakes in Florida, right?

MR. DAVE ROCHMAN: It is.

MR. SOL KLAYMINC: You see, in Florida you got the people for that.

MR. GUNNAR ASKELUND: There's a lot'a money down there.

MR. SOL KLAYMINC: You got the country club people. They buy three, four dozen.

[158] MR. MEL WEINBERG: He lives in a high class section.

MR. DAVE ROCHMAN: One of the classiest boutique stores—which was, by the way, just written up, in one of the boutique magazine—*Vogue* or something like that in Chicago, Francis Hepperman's—flew in to see me on this stuff. She was in last week with her sister. So, I mean, you know, this stuff here, your talking—it's a class act, and you can go into the finest stores in the, in the country, in the world. I had somebody from Calgary, Canada who's on vacation down in, in Scottsdale, Arizona—I don't know what the guy does, and I didn't ask him—but, evidently, he's got a lot of money. He must be—I think he said oil or something like that up in Calgary, and this guy wants to strike a deal and, handle, you know, the whole country.

MR. SOL KLAYMINC: He's in oil and he wants to do this?

[159] MR. DAVE ROCHMAN: Yeah. His wife must have left about three grand with us.

MR. SOL KLAYMINC: Well, I have a sales organization, which I could get back, you know on that eel stuff—I could set it up.

MR. DAVE ROCHMAN: Put some feelers out. You're going to find that eel is the hottest thing in the country today. It's the hottest thing in the world.

MR. SOL KLAYMINC: We can develop that together.

MR. MEL WEINBERG: Okay.

MR. SOL KLAYMINC: Sell this around the country.

MR. MEL WEINBERG: I can see you when you get down to Haiti, having little blacks goin' out and collectin' eels for you.

[160] MR. SOL KLAYMINC: Yeah.

MR. DAVE ROCHMAN: I only got one question I want to ask?

MR. SOL KLAYMINC: Yeah.

MR. DAVE ROCHMAN: You can find the people in Haiti that can produce, that actually can stitch and cut and—

MR. SOL KLAYMINC: Well, I'll do the cutting, right now, at home.

MR. DAVE ROCHMAN: But I mean, you're going to be able to to the cutting in Haiti? With the uh—

MR. SOL KLAYMINC: Yeah.

MR. DAVE ROCHMAN: With the work force you got there?

MR. SOL KLAYMINC: No, my son does the cutting.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[Title Omitted in Printing]

TRANSCRIPT OF TELEPHONE CALL
MR. SOL KLAYMINC CALLS MR. MEL WEINBERG
AT 747-2485

TAPE #42

4/17/83, 10:40 P.M.

* * * *

[7] MR. SOL KLAYMINC: Yeah, and how, yeah, incidentally, how did you make out with that guy finally?

MR. MEL WEINBERG: We're buying the place.

MR. SOL KLAYMINC: Which place?

MR. MEL WEINBERG: The plant that makes the material.

MR. SOL KLAYMINC: Yeah?

MR. MEL WEINBERG: Yeah.

MR. SOL KLAYMINC: It's dangerous though, you know that.

MR. MEL WEINBERG: Why?

MR. SOL KLAYMINC: Well, you never know, if somebody puts a rat on, the plant is worth nothing.

MR. MEL WEINBERG: Well, we're not going to use it for nothing else, how could someone, we're going to put [8] our own people in there.

MR. SOL KLAYMINC: I know that, but you never know when somebody follows a source down.

MR. MEL WEINBERG: Yeah, but the sources are all going to be going to you and George.

MR. SOL KLAYMINC: Yeah, but, in other words, is there a chance that somebody can rat whatever's being made.

MR. MEL WEINBERG: No, because we're not selling it to nobody.

MR. SOL KLAYMINC: Okay, a'll right.

MR. MEL WEINBERG: It's only gonna, look, there's only gonna be two places and then we're going to buy another place that make it our own places.

MR. SOL KLAYMINC: Uh huh. My son was mentioning that you wanted him to, that you might buy a factory to make the goods in New York or some. . .

[9] MR. MEL WEINBERG: Right, and we're going to put him in there.

MR. SOL KLAYMINC: No, he wouldn't do it, and I told him I wouldn't want him to do it. Mel, my advice, you cannot manufacture that stuff on any large scale, not in the states.

MR. MEL WEINBERG: No, what I want him to do. . .

MR. SOL KLAYMINC: Yeah?

MR. MEL WEINBERG: Okay, is to cut the material to ship to you.

MR. SOL KLAYMINC: Well that's something else.

MR. MEL WEINBERG: Okay?

MR. SOL KLAYMINC: He didn't understand that.

MR. MEL WEINBERG: No, well. . .

MR. SOL KLAYMINC: Not to produce it?

[10] MR. MEL WEINBERG: No no, we're just going to cut the material at the other plant, all right?

MR. SOL KLAYMINC: Right.

MR. MEL WEINBERG: And then send it down to you.

MR. SOL KLAYMINC: Uh huh.

MR. MEL WEINBERG: So all you gotta do is the sewin'.

MR. SOL KLAYMINC: Yeah.

MR. MEL WEINBERG: You follow me?

MR. SOL KLAYMINC: And you put it all together.

MR. MEL WEINBERG: Right.

MR. SOL KLAYMINC: Yeah.

MR. MEL WEINBERG: That's what we intend to do.
[11] MR. SOL N. KLAYMINC: Okay, that makes a little more sense.

MR. MEL WEINBERG: But, we'll have, we'll own the rollers and everything.

MR. SOL N. KLAYMINC: All right, but like I say, as long as you don't look to sell the material outside. . .

MR. MEL WEINBERG: No, no, no.

MR. SOL N. KLAYMINC: Because then you're exposing yourself too much.

MR. MEL WEINBERG: No, no way are we going to sell on the out.

MR. SOL N. KLAYMINC: All right.

MR. MEL WEINBERG: This is strictly for our own use.

MR. SOL N. KLAYMINC: Okay, then it makes sense. So, in other words, you can work out something with that guy?

MR. MEL WEINBERG: Yeah.

MR. SOL N. KLAYMINC: Are you going to buy his finished goods too?

. . . .

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[Title Omitted in Printing]

AFFIDAVIT

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

J. JOSEPH BAINTON, being duly sworn, deposes and says:

1. I am a member of the bar of this Court and pursuant to order dated March 31, 1983, was specially appointed to represent the Government in connection with the investigation and prosecution of acts constituting criminal contempt of this Court's Final Consent Judgment and Permanent Injunction filed July 30, 1982 (the "injunction"). I make this affidavit in support of the Government's application for the issuance of the annexed order directing the above alleged criminal contemnors to show cause why they should not be convicted of criminal contempt of the injunction.

2. Pursuant to the aforesaid order, commencing in the late afternoon of March 31, 1983, an intensive undercover investigation as described in my March 30, 1983 affidavit was undertaken by the Government. That investigation has yielded in excess of 70 tape recordings and a number of videotapes. The three persons who have served as Government undercover agents are Gunnar Askeland, who for a period in excess of ten years served with the Federal Bureau of Investigation, Melvin Weinberg, who on numerous prior occasions has acted as a

undercover agent on behalf of the Government, and Michael Harvey, a sergeant in the San Fernando Police Department. In addition, representatives of the office of the United States Attorney for the Central District of California, the office of the District Attorney of Los Angeles, and members of the Federal Bureau of Investigation have also been of assistance.

3. I hereby represent to the Court that the Government has amassed overwhelming evidence to support each of the very precisely defined charges contained in the order to show cause. Accordingly pursuant to 28 U.S.C. § 401(3) and Rule 42(b) of the Federal Rules of Criminal Procedure I hereby request that the Court sign the annexed order to show cause, thus placing the alleged criminal contemnors on notice of the charges of criminal contempt.

4. Also being submitted herewith are warrants for the arrest of each of the contemnors. As the Court is aware, alleged contemnor Sol. N. Klayminc has recently been convicted of criminal contempt. Both he and his son, alleged criminal contemnor Barry Dean Klayminc, have a manufacturing plant in Haiti. Sol N. Klayminc has stated during the course of the investigation that he does not mind living in Haiti. Accordingly, there is ample ground to believe that unless an appropriate bail is fixed neither he nor his son will appear for the trial of this action.

5. Defendant Gerald J. Young during the course of the investigation has revealed that he deals in cash transactions approaching and on occasion exceeding seven figures. As is a matter of public record, if convicted in this proceeding, by reason of collateral estoppel pursuant to the terms of a final consent judgment entered in an action in the Central District of California to which Mr. Young and Vuitton et Fils S.A. were parties, Mr. Young will be obliged to pay to Vuitton the sum of \$750,000. Accordingly, there is ample reason to believe that unless an appropriate bail is fixed Mr. Young will not appear at

the trial of this action. Indeed, at the moment Government undercover agents have been informed that Mr. Young is "very hinky" and has "gone underground".

6. Defendants David Rochman and Robert G. Pariseault have undertaken to sell to Government undercover agents for \$550,000 paraphernalia used to manufacture counterfeit Louis Vuitton fabric and, in addition, have agreed to sell to Government undercover agents thousands of counterfeit Vuitton goods. Mr. Pariseault, a Rhode Island attorney, I am informed in the past has represented individuals believed to be associated with Organized Crime. In addition, during the course of the investigation Messrs. Rochman and Pariseault have recounted the great steps that they have taken to avoid detection. Accordingly, there is reason to believe that unless an appropriate bail is fixed they will not appeal for the trial of this action.

7. During the course of the investigation, alleged contemnor George Cariste claimed to be affiliated with known members of Organized Crime including "Matty the Horse". He is presently reported to "have gone underground". Thus, there is sufficient reason to believe that unless an appropriate bail is fixed he will not appeal for the trial of this action.

8. Alleged contemnor Nathan Helfand, who as described in my March 30 affidavit is the "middleman" through whom Government undercover agents met all of the other alleged contemnors, I understand is a person with few roots in the community and thus is unlikely to appear at trial unless an appropriate bail is set.

9. Accordingly, it is appropriate and necessary that these individuals be arrested rather than summoned to appear before the Court. Assuming the Court signs the warrants being submitted herewith, these arrests will be made by special agents of the Federal Bureau of Investigation. The Bureau's participation in this proceeding I am informed has already been approved in Washington.

10. These arrest will all be attempted to be made at noon on May 2, 1983, when various meetings and "pay-offs" have been scheduled at various locations by Government undercover agents. The Government is seeking these warrants at this time in order to co-ordinate the various arrests among several offices of the Federal Bureau of Investigation. Until the arrests are made, the Government undercover operation will continue and further evidence of guilt will likely be obtained during the next six days. Such conduct by the Government under these circumstances is in all respects proper. *United States v. Watson*, 423 U.S. 411, 431 (1976) (Powell, J. concurring); *Koran v. United States*, 469 * * *, 1071 (5th Cir. 1972); *United States v. Joines*, 258 F.2d 471 * * * Cir.) *cert. denied*, 358 U.S. 880 (1958).

/s/ J. Joseph Bainton
J. JOSEPH BANTON

[Affidavit Omitted in Printing]

J. JOSEPH BAINTON
45 Rockefeller Plaza
New York, N.Y. 10020
212 841-5700

May 7, 1984

Lorin Duckman, Esq.
100 Church Street
Suite 1968
New York, New York 10007

Re: United States of America, *ex rel.*
Vuitton et Fils S.A. v. Karen Bags,
Inc. et al., 83 CR Misc. 1, pg. 22 (CLB)

Dear Mr. Duckman:

The following constitutes the entire terms of the agreement between Specially Appointed Attorney for the United States of America J. Joseph Bainton (the "Government") and your client, David Rochman ("Rochman").

1. On or before May 15, 1984, Rochman will plead guilty before a United States Magistrate to a petty offense of violating Title 18, United States Code, Section 401, on charges of criminal contempt arising from Rochman's role in aiding and abetting Sol Klaymine and others willfully violate an order of the United States District Court for the Southern District of New York prohibiting the counterfeiting of the products bearing the registered trademark of Louis Vuitton S.A. ("Vuitton").

2. Rochman will voluntarily be deposed by the Government with respect to his knowledge of, and participation in, the acts leading to the charges initiated by the order to show cause issued by United States District Judge Charles L. Brieant on April 29, 1983, charging criminal contempt violations. Furthermore, Rochman agrees to produce for the Government any and all docu-

mentary material and other evidence requested by it in connection with this matter.

3. Rochman will voluntarily testify as a witness in the trial, now scheduled to commence on May 14, 1984, and at any other hearings and trials resulting from the order to show cause dated April 29, 1983. Further, Rochman agrees to testify completely, candidly and truthfully with respect to all matters about which he is questioned during the course of the trials and hearings, if any.

4. Both parties agree to request that Rochman's sentencing be held in abeyance until the completion of any trials stemming from the order to show cause.

5. In exchange for his cooperation, the Government agrees to provide the sentencing court orally and in writing with a statement describing the full extent of Rochman's cooperation with the Government. Furthermore, if at the completion of all of his testimony, the Government is satisfied that Rochman has testified truthfully and completely about the facts of the case, it will recommend to the sentencing court that the court impose on Rochman a probationary sentence. It being understood that such recommendation will not be binding on the sentencing court.

6. If it is determined at any time by the Government that Rochman has not been fully and completely truthful in his statements and testimony, the Government will be free to prosecute Rochman for any and all violations by him of Title 18, United States Code, Section 401 stemming from trademark infringements regarding the products of Louis Vuitton. Further, the Government will be free to use against Rochman any statements or testimony which he has given. Additionally, if it is determined that Rochman has deliberately lied or been untruthful in his testimony, Specially Appointed Attorney for the United States of America J. Joseph Bainton will be free to refer Rochman's testimony for possible prosecution to the United States Attorney's Office for the Southern District of New York.

7. It is understood and agreed by and between the parties that this agreement is binding on the Government with respect to the charges against Rochman initiated by the order to show cause dated April 29, 1983 and any other known or unknown Vuitton trademark violation.

Very truly yours,

/s/ J. Joseph Bainton
J. JOSEPH BAINTON
Specially Appointed Attorney
for the United States of America

If the above accurately reflects the entire terms of the agreement between the parties, please so indicate by signing and having your client sign below.

/s/ Lorin Duckman
LORIN DUCKMAN

/s/ David Rochman
DAVID ROCHMAN

REBOUL, MACMURRAY, HEWITT,
MAYNARD & KRISTOL
45 Rockefeller Plaza
New York, N.Y. 10111

May 7, 1984

Lorin Duckman, Esq.
100 Church Street
Suite 1968
New York, N.Y. 10007

Louis Vuitton S.A., et al. v.
Host National Corporation, et al.
83 Civ. 4376 (CLB)

Dear Mr. Duckman:

I am writing to confirm our discussions regarding disposition of the claims asserted in the above-entitled action against your client David Rochman, his wife, Karen Rochman, his brother and sister-in-law, Donald and Sharon DeCastle, and their company Host National Corporation.

In connection with discussions regarding the disposition of certain criminal charges against Mr. Rochman in the related criminal contempt proceeding entitled *United States of America, ex rel., Vuitton et Fils S.A., and Louis Vuitton S.A. v. Karen Bags, Inc., Sol N. Klayminc, et al.*, you disclosed that Mr. Rochman had recently gone through personal bankruptcy and was desirous of putting all aspects of this matter behind him. Mr. Rochman also indicated that neither other members of his family nor Host, as a practical matter, are in a position to satisfy any judgment which might be rendered against them in that matter.

Accordingly, in connection with a plea agreement as is reflected in the letter between you and me bearing the same date as this letter, on behalf of our clients Louis Vuitton S.A., Gucci Shops, Inc. and Fendi Paola N Sorelle

SAS Company, I agreed to dismiss with prejudice all claims asserted in the above-entitled action against the individuals above-named if Mr. Rochman complies in all respects with the terms of the above-mentioned plea agreement.

Very truly yours,

/s/ J. Joseph Bainton
J. JOSEPH BAINTON

JJB:Di

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Case No. 83-01314-BKC-TCB

IN RE SOL KLAYMINC and SYLVIA KLAYMINC, DEBTORS.

Adversary Case No.

VUITTON ET FILS S.A., PLAINTIFF,

vs.

SOL KLAYMINC and SYLVIA KLAYMINC, DEFENDANTS.

**COMPLAINT TO DETERMINE DISCHARGEABILITY
OF DEBTS AND OBJECTIONS TO
DISCHARGE OF DEFENDANTS**

Plaintiff Vuitton et Fils S.A. ("Vuitton"), by its attorneys, Reboul, MacMurray, Hewitt, Maynard & Kristol, for its Complaint to Determine Dischargeability of Debts and Objections to Discharge of defendants Sol Klaymenc and Sylvia Klaymenc ("defendants"), alleges:

Jurisdiction

1. This Court has jurisdiction of this proceeding pursuant to 28 U.S.C. § 1471, 11 U.S.C. §§ 523 and 727.

The Parties

2. Upon information and belief, on or about July 18, 1983, defendants filed a joint petition pursuant to Chap-

ter 7 of the Bankruptcy Code, 11 U.S.C. § 701 *et seq.* Defendants are the debtors in this Chapter 7 proceeding and have sought a discharge of their debts pursuant to 11 U.S.C. § 727.

3. Vuitton is a creditor of defendants.

Background of the Action

4. This adversary proceeding is brought to object to the discharge of defendants on the grounds that defendants should be barred from a discharge of their debts pursuant to U.S.C. §§ 523 and 727.

5. Upon information and belief, for more than five years, defendants have been engaged in an unlawful conspiracy to manufacture and sell hundreds of thousands of dollars worth of counterfeit Vuitton merchandise in violation of the federal laws prohibiting trademark infringement, 15 U.S.C. §§ 1114 and 1125, federal and state laws prohibiting unfair competition, other civil and criminal statutes and laws, and various outstanding injunctions against them issued by the United States District Court for the Southern District of New York.

6. Pursuant to their unlawful scheme, defendants, directly and through their co-conspirators, mass-manufactured counterfeit Vuitton merchandise, and sold, and conspired to sell, that counterfeit merchandise to consumers on a nationwide basis.

7. In December, 1978, Vuitton commenced an action against Sol N. Klayminc, and others, in the United States District Court for the Southern District of New York for trademark infringement and other violations of Vuitton's rights. Sylvia Klayminc was thereafter added as a defendant in the case.

8. On December 12, 1978, defendant Sol N. Klayminc, among others, consented to a preliminary injunction entered by the United States District Court for the Southern District of New York, enjoining him, and all those acting in concert or participation with him, from manufacturing or selling counterfeit Vuitton merchandise.

9. In violation of the foregoing injunction, defendants continued their unlawful manufacture and sale of counterfeit Vuitton goods. As a result, on May 20, 1982, after a three day trial in the Southern District of New York, Sol N. Klayminc was found guilty of criminal contempt, and placed on probation for a period of one year.

10. On July 13, 1982, in settlement of the litigation in the Southern District of New York, defendants executed and delivered to Vuitton Affidavits of Confession of Judgment confessing judgment against them in the amount of \$100,000 for their unlawful activities, and defendants also executed and delivered to Vuitton a Deferred Payment and Security Agreement, dated July 13, 1982, by which they agreed, among other things, to pay to Vuitton \$100,000, plus interest, in satisfaction of Vuitton's judgment against them for damages resulting from their tortious, willful and malicious conduct.

11. Defendants have failed to comply with the terms of that Agreement, as described below, and, as a result, are presently indebted and in default to Vuitton under the terms of the agreement in the amount of \$79,757.36, plus interest, as well as for the costs and attorneys' fees arising out of this action.

12. On July 22, 1982, defendants entered into a Final Consent Judgment and Permanent Injunction by which they were enjoined by the United States District Court for the Southern District of New York from, *inter alia*, engaging in the manufacture and sale of counterfeit Vuitton merchandise.

13. Upon information and belief, despite the outstanding permanent injunction issued in July, 1982, defendants continued to manufacture and sell counterfeit Vuitton merchandise and to realize substantial profits from their unlawful operations. As a result, defendant Sol N. Klayminc is now a defendant in further criminal and civil contempt proceedings in the United States District Court for the Southern District of New York.

14. Upon information and belief, defendants' principal source of income over at least the past five years has been the unlawful manufacture and sale of counterfeit merchandise. Upon information and belief, in the past five years alone, defendants have reaped hundreds of thousands of dollars of profits through their unlawful manufacture and sale of counterfeit Vuitton goods. Upon information and belief, defendant Sol N. Klaymine acknowledged these extensive counterfeiting activities and illegal profits in March or April of 1983 while being video or audio taped as part of an undercover investigation authorized by the United States District Court for the Southern District of New York.

15. Having reaped profits in the hundreds of thousands of dollars from their unlawful activities, and having incurred more than \$1,513,671 of debts to their creditors, defendants now claim to have only \$76,875 of assets (virtually all of which they claim to be exempt) and they seek to avoid payment of their debts by means of this Chapter 7 proceeding. Defendants' efforts to obtain a discharge of their obligations should be denied on each of the grounds set forth below.

FIRST OBJECTION TO DISCHARGE

16. By their unlawful scheme to manufacture and sell counterfeit Vuitton merchandise, defendants have tortiously, maliciously and willfully injured Vuitton and its property. Defendants directly, and through their agents and co-conspirators, have, among other things, (a) obtained hundreds of thousands of dollars in illegal profits in violation of Vuitton's rights, (b) diverted hundreds of thousands of dollars of sales from Vuitton, and (c) violated and caused injury to the Vuitton name, trademark, and reputation.

17. Defendants are liable to Vuitton in an amount exceeding \$200,000 for their unlawful activities, as set forth above, and are further liable to Vuitton pursuant

to the July 13, 1982 Deferred Payment and Security Agreement in the amount of \$79,757.36 plus interest, as well as for the costs and attorneys' fees of this proceeding.

18. The foregoing liabilities are nondischargeable debts under 11 U.S.C. § 523(6).

SECOND OBJECTION TO DISCHARGE

19. Pursuant to the terms of the July 13, 1982 Deferred Payment and Security Agreement, defendants undertook and agreed to pay Vuitton \$100,000, plus interest, in settlement of pending litigation by Vuitton against defendants. Defendants pledged various assets to Vuitton as security for the foregoing debt, and represented that they would execute further documents to effect the transfer, pledge and assignment of various assets and the perfection of such security interests.

20. In order to induce Vuitton to enter the July 13, 1982 Deferred Payment and Security Agreement, defendants falsely and fraudulently represented (a) that they intended to abide by the terms of the agreement, (b) that various assets were pledged, or would be pledged, as security for defendants' obligation to Vuitton under the agreement, and that defendants would execute various documents to confirm and perfect Vuitton's security interests in the foregoing assets, and (c) that they would not further transfer or encumber certain securities or assets pledged to Vuitton.

21. In fact, defendants' representations were false and misleading, and defendants knew those representations to be false and misleading, in that (a) defendants had no intention of abiding by the terms of the agreement, and in fact, repudiated the agreement almost immediately after it was entered into, (b) defendants had no intention of executing the documents which they agreed to execute under the July 13, 1982 Deferred Payment and Security Agreement in order to perfect Vuitton's security interests and rights in various assets,

and (c) defendants intended to further transfer and pledge to others certain assets which they had pledged or agreed to transfer to Vuitton, in violation of their representations and agreements. Defendants representations were further false and misleading in that defendants knew they were not in a position to fulfill the terms of the agreement.

22. By means of the foregoing, defendants obtained credit from Vuitton and an extension of their obligations to Vuitton, and they incurred a debt to Vuitton of \$100,000 which remains outstanding in the amount of \$79,757.36, plus interest by false pretenses, false representations and actual fraud, and by means of statements which were materially false and misleading.

23. The debt owed by defendants to Vuitton pursuant to the July 13, 1982 Deferred Payment and Security Agreement, including interest and the costs and attorneys fees to which Vuitton is entitled thereunder, is a nondischargeable indebtedness pursuant to 11 U.S.C. § 523(a)(2)(A) and (B).

THIRD OBJECTION TO DISCHARGE

24. Upon information and belief, defendants obtained hundreds of thousands of dollars of profits from their illegal activities as set forth above and from their other business ventures.

25. Upon information and belief, in order to avoid the payment of their debts, and with intent to hinder, delay and defraud their creditors and the officers of the estate, defendants have, within one year of the filing of their petition, and thereafter, transferred, removed and concealed their cash, assets and property, including the huge profits from their illegal business activities.

26. Upon information and belief, in order to avoid the payment of their debts, and with intent to hinder, delay and defraud their creditors and the officers of the estate, defendants have, within one year of the filing of their petition, and thereafter, transferred, removed,

concealed or destroyed a substantial quantity of goods and assets, including goods and assets used in their unlawful counterfeiting scheme.

27. By reason of the foregoing, defendants are barred from a discharge of their debts pursuant to 11 U.S.C. § 727(a)(2).

FOURTH OBJECTION TO DISCHARGE

28. Upon information and belief, with intent to hinder, delay and defraud their creditors and officers of the estate, and in order to conceal their unlawful activities and counterfeiting operations, defendants have concealed, destroyed, mutilated, falsified, and failed to keep and preserve books, documents, records and papers concerning their financial condition and business transactions, including their illegal activities in manufacturing and selling counterfeit merchandise.

29. By reason of the foregoing, defendants are barred from a discharge of their obligations pursuant to 11 U.S.C. § 727(a)(3).

FIFTH OBJECTION TO DISCHARGE

30. Upon information and belief, with intent to hinder, delay and defraud their creditors and officers of the estate, and in order to conceal their unlawful counterfeiting operations, defendants have, in and in connection with these Chapter 7 proceedings, knowingly and fraudulently made false statements under oath, including among other things:

(a) false statements in their Statement of Financial Affairs, Statement of Assets, and Statements of Liabilities concerning their income, assets, accounts, the transfer and current locations of their assets, and the maintenance of books and records; and

(b) false statements in their Statement of Financial Affairs and Statements of Liabilities concerning defendants' liabilities to Vuitton and Vuitton's security interests in their assets.

31. By reason of the foregoing, defendants are barred from a discharge of their debts pursuant to 11 U.S.C. § 727(a)(4)(A).

SIXTH OBJECTION TO DISCHARGE

32. In their Statement of Financial Affairs and other statements submitted to this Court under penalty of perjury, defendants have claimed to have more than \$1,513,671 of debts and only \$76,875 of assets.

33. Defendants have failed to explain satisfactorily the loss of the substantial profits from their operations, the loss of their assets, and the gross deficiency of their assets to meet their stated liabilities of more than \$1,513,671.

34. By reason of the foregoing, defendants are barred from a discharge of their debts pursuant to 11 U.S.C. § 727(a)(5).

SEVENTH OBJECTION TO DISCHARGE

35. According to defendant's Statement of Financial Affairs, Statement of Assets, and Statement of Liabilities, defendants have incurred more than \$1,513,671 of debts and have only \$76,875 of assets.

36. Upon information and belief, defendants systematically incurred huge debts to their creditors, including Vuitton, at a time when their liabilities greatly exceeded their assets and they had no realistic hope of repaying those debts.

37. Defendants incurred the foregoing debts by fraudulently representing to creditors that they intended to meet their obligations, when in fact defendants could not, and did not intend to do so, and by failing to inform creditors that, at the very time those debts were incurred, defendants were hopelessly insolvent and had no reasonable possibility of paying their debts as they came due.

38. Defendants acted with intent to deceive, defraud, and steal from their creditors, and defendants' conduct constitutes actual larceny from their creditors.

39. By means of the foregoing, defendants were able to incur huge debts far exceeding their assets, causing Vuitton and defendants' other creditors huge losses and inability to recover the debts owed to them.

40. By reason of the foregoing, defendants are barred from a discharge of their obligations to Vuitton pursuant to 11 U.S.C. § 523(a)(2)(A)-(B), (4), and (6).

EIGHTH OBJECTION TO DISCHARGE

41. Upon information and belief, defendants have knowingly and fraudulently, in and in connection with this case, withheld from the officers of the estate truthful and accurate recorded information concerning their financial affairs, assets and liabilities.

42. By reason of the foregoing, defendants are barred from a discharge of their debts pursuant to 11 U.S.C. § 727(a)(4)(D).

WHEREFORE, Vuitton prays that this Court enter Final Judgment:

(a) determining that defendants' indebtedness to Vuitton is nondischargeable; and

(b) denying defendants any discharge in this proceeding,

together with such other and further relief as the Court may deem appropriate, including an award of its costs and attorneys' fees in connection with this proceeding.

Dated: November 1, 1983

REBOUL, MACMURRAY, HEWITT,
MAYNARD & KRISTOL

By /s/ J. Joseph Barits—per DSE
A Member of the Firm
Attorneys for Plaintiff
Vuitton et Fils S.A.
45 Rockefeller Plaza
New York, New York 10111
Telephone: (202) 841-5700

—and—

BUCHBINDER & ELEGANT, P.A.

By _____
A Member of the Firm
Attorneys for Plaintiff
Vuitton et Fils S.A.
46 Southwest First Street
Miami, Florida 33130

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

[Title Omitted in Printing]

NOTICES OF DEPOSITION AND FIRST REQUEST
FOR PRODUCTION OF DOCUMENTS OF
VUITTON ET FILS S.A. TO SOL KLAYMINE
AND SYLVIA KLAYMINE

PLEASE TAKE NOTICE that, pursuant to Rule 7030 of the Rules of Bankruptcy Procedure and Rule 30 of the Federal Rules of Civil Procedure, Plaintiff Vuitton et Fils S.A. ("Vuitton") will take the depositions of the following persons commencing at 10:00 A.M. on the dates set forth below, at the offices of Buchbinder & Elegant, P.C., 46 Southwest First Street, Miami, Florida, before a notary public or some other person authorized by the State of Florida to administer oaths:

<u>Person</u>	<u>Date</u>
(1) Sol N. Klaymine	December 2 and 5, 1983
(2) Karen Handbags, Inc., by director and officer Sol N. Klaymine	December 2 and 5, 1983
(3) Jade Handbag Co., Inc., by director and officer Sol N. Klaymine	December 2 and 5, 1983
(4) Jak Handbags, Inc., by director and officer Sol N. Klaymine	December 2 and 5, 1983
(5) Barry Originals, Inc., by director and officer Sol N. Klaymine	December 2 and 5, 1983
(6) Sylvia Klaymine	December 2 and 5, 1983

The foregoing depositions will continue from day to day until completed. You are invited to attend and cross examine.

PLEASE TAKE FURTHER NOTICE that, pursuant to Rule 7034 of the Rules of Bankruptcy Procedure and Rule 34 of the Federal Rules of Civil Procedure, defendants Sol N. Klayminc and Sylvia Klayminc are required to produce at the offices of Vuitton's attorneys, Buchbinder & Elegant, P.C., 46 Southwest First Street, Miami, Florida, at 10:00 A.M. on December 2, 1983, and permit Vuitton or someone acting on Vuitton's behalf to inspect and copy the documents described in the annexed Schedule A.

PLEASE TAKE FURTHER NOTICE that, pursuant to Rule 9016 of the Rules of Bankruptcy Procedure and Rule 45 of the Federal Rules of Civil Procedure, deponents Karen Handbags, Inc., Jade Handbag Co., Inc., Jak Handbags, Inc. and Barry Originals, Inc. are required to produce, at the offices of Vuitton's attorneys, Buchbinder & Elegant, P.C., 46 Southwest First Street, Miami, Florida, at 10:00 A.M. on December 2, 1983, and permit Vuitton or someone acting on Vuitton's behalf to inspect and copy the documents described in the annexed Schedule A.

SCHEDULE A

Definitions

1. The term "documents" means all original documents of any nature whatsoever and all non-identical copies thereof in your possession, custody or control, regardless of where located, and includes, but is not limited to, contracts, agreements, records, books of account, tape recordings, summaries, minutes, notes, agenda, bulletins, notices, announcements, instructions, charts, manuals, brochures, schedules, price lists, telegrams, telexes, teletype, safety deposit box records, cancelled checks, bank statements, creditors' statements, and any other documents as defined in Rule 34 of the Federal Rules of Civil Procedure.

2. The term "Related Entities" refers to Karen Handbags, Inc., Jade Handbag Co., Inc., Jak Handbags, Inc., Barry Originals, Inc., and all other entities over which any of the foregoing, Sol N. Klayminc, or Sylvia Klayminc have control and any entities of which any one or more of them together have more than 25% ownership, directly or indirectly.

Instruction

1. For all of the documents produced, specifically identify to which request or requests for production they are responsive.

Documents to be Produced

1. All documents which refer to, relate to, set forth or describe any and all of the property, assets, cash or accounts of Sol N. Klayminc, Sylvia Klayminc, or Related Entities at all times from January 1, 1978 to date.

2. All records which refer to, relate to, set forth or describe any and all of the bank or brokerage accounts of Sol N. Klayminc, Sylvia Klayminc, or Related Entities from January 1, 1978 to date, including without limitation, all statements, cancelled checks, bank books, and

other records relating to any such bank or brokerage accounts.

3. All documents which refer to, relate to, set forth or describe any income, receipts, revenues, or all sources of income, of Sol N. Klayminc, Sylvia Klayminc, or Related Entities from January 1, 1978 to date.

4. All documents which refer to, relate to, set forth or describe the business or businesses, of Sol N. Klayminc, Sylvia Klayminc, or Related Entities from January 1, 1978 to date, including but not limited to all business records and documents relating to all business transactions during the foregoing period.

5. All documents which refer to, relate to, set forth or describe any payments, disbursements, debts, or obligations incurred by Sol N. Klayminc, Sylvia Klayminc, or Related Entities from January 1, 1978 to date.

6. All documents which refer to, relate to, set forth or describe any transfers of cash, assets, or other property or interests by Sol N. Klayminc, Sylvia Klayminc, or Related Entities from January 1, 1978 to date.

7. All federal, state or city tax returns prepared or filed by Sol N. Klayminc, Sylvia Klayminc, or Related Entities from January 1, 1978 to date.

8. All documents which refer to, relate to, set forth or describe any money, property, or other interests of Sol N. Klayminc, Sylvia Klayminc, or Related Entities located in any foreign country, or to any business transacted by any of the foregoing persons in a foreign country, or to any income earned by any of the foregoing persons in a foreign country, from January 1, 1978 to date.

9. All documents which refer to, relate to, set forth or describe any taxes, fees or tariffs which Sol N. Klayminc, Sylvia Klayminc, or Related Entities have paid or owed to any foreign nation or government, or which such nations or governments have claimed to be owed, from January 1, 1987 to date.

10. All documents which refer to, relate to, set forth or describe any investments, purchases or acquisitions of

any property, securities or interests by Sol N. Klayminc, Sylvia Klayminc, or Related Entities from January 1, 1975 to date.

11. All documents which refer to, relate to, set forth or describe Vuitton et Fils S.A. ("Vuitton"), or the trademark, rights, interests, or claims of Vuitton, or the Deferred Payment and Security Agreement entered into with Vuitton on July 13, 1982.

12. All documents which refer to, relate to, set forth or describe any income or proceeds from the manufacture, sale or distribution, by any reason, of any merchandise bearing a Vuitton trademark or a representation or likeness of a Vuitton trademark, or any merchandise having a likeness to Vuitton merchandise, from January 1, 1975 to date.

13. All documents which refer to, relate to, set forth or describe any merchandise, or the manufacture, sale or distribution, by any person, of any merchandise bearing a Vuitton trademark or a representation or likeness of a Vuitton trademark, or any merchandise having a likeness to any Vuitton merchandise, from January 1, 1975 to date.

14. All documents which refer to, relate to, set forth or describe any transactions, negotiations, agreements, or plans, by any person, to manufacture, sell, or distribute any merchandise bearing a Vuitton trademark or a representation or likeness of a Vuitton trademark, or any merchandise having a likeness to any Vuitton merchandise, from January 1, 1975 to date.

15. All documents which refer to, relate to, set forth or describe any bankruptcy proceedings of, or the possibility of filing any bankruptcy proceedings by, Sol N. Klayminc, Sylvia Klayminc, or Related Entities.

Dated: New York, New York
November 1, 1983

REBOUL, MACMURRAY, HEWITT,
MAYNARD & KRISTOL

By /s/ J. Joseph Bainton—per DSE
A Member of the Firm
Attorneys for Plaintiff
Vuitton et Fils S.A.
45 Rockefeller Plaza
New York, New York 10111
Telephone: (212) 841-5700

—and—

BUCHBINDER & ELEGANT, P.C.

By

A Member of the Firm
Attorneys for Plaintiff
Vuitton et Fils S.A.
46 Southwest First Street
Miami, Florida 33130
Telephone: (305) 358-1515

To: DANIEL L. BAKST, ESQ.
P.O. Drawer 3948
West Palm Beach, Florida 33402

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

78 Civ. 5863 (CLB)

VUITTON ET FILS S.A., and LOUIS VUITTON S.A.,
PLAINTIFFS

—against—

KAREN BAGS, INC., JADE HANDBAG CO., INC., SOL N.
KLAYMINC and JAK HANDBAG INC., DEFENDANTS AND
ALLEGED CIVIL CONTEMNORS

—and—

BARRY DEAN KLAYMINC, GERALD J. YOUNG, GEORGE
CARISTE S.M.E., S.A. CRYSTAL, S.A. DAVID ROCHMAN,
ROBERT G. PARISEAULT, ESQ. and NATHAN HELFAND,
ADDITIONAL ALLEGED CIVIL CONTEMNORS

NOTICE OF MOTION

PLEASE TAKE NOTICE that upon the annexed affidavits of J. Joseph Bainton, Esq., and Brian Dowd, and upon all prior pleadings and proceedings heretofore had herein, the undersigned will move this Court before the Hon. Charles L. Brieant, in Courtroom 705, of the United States Court House, Foley Square, New York, New York on July 23, 1984, at 9:30 a.m., or as soon thereafter as counsel can be heard, for an order pursuant to Rule 56 of the Federal Rules of Civil Procedure granting plaintiffs summary judgment in their favor and against alleged civil contemnors Sol N. Klayminc, Barry Dean Klayminc, Gerald J. Young, George Cariste and

Nathan Helfand in the sum of \$538,991.12, together with such other and further relief as to this Court may seem just and proper.

Dated: New York, New York
June 20, 1984

REBOUL, MACMURRAY, HEWITT,
MAYNARD & KRISTOL

By /s/ J. Joseph Bainton
A Member of the Firm
Attorneys for Plaintiffs
45 Rockefeller Plaza
New York, New York 10111
Telephone: (212) 841-5700

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[Title Omitted in Printing]

AFFIDAVIT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

J. JOSEPH BAINTON, being duly sworn, deposes and says:

1. I am a member of the bar of this Court and of the firm of Reboul, MacMurray, Hewitt, Maynard & Kristol, attorneys for plaintiffs herein. I make this affidavit based upon personal knowledge in support of the motion pursuant to Rule 56 of the Federal Rules of Civil Procedure of Vuitton et Fils S.A. and Louis Vuitton S.A. (hereinafter collectively "Vuitton") for an order granting summary judgment in favor of Vuitton and against alleged civil contemnors Sol N. Klayminc, Barry Dean Klayminc, Gerald J. Young, George Cariste, and Nathan Helfand in the sum of \$538,991.12.

2. Each of the alleged civil contemnors were convicted on May 24, 1984, of criminal contempt of a permanent injunction of this Court entered on July 30, 1982 (the "injunction"). The alleged civil contemnors are thus collaterally estopped from denying that they are likewise in civil contempt of the injunction.

3. Under the Rule of *Vuitton et Fils S.A. v. Carousel Handbags*, 592 F.2d 126 (2d Cir. 1979), upon a showing of civil contempt this Court must award Vuitton the reasonable costs of prosecuting the contempt, including

attorney's fees, if the violation of the [injunction] is found to have been willful." *id.* at 130.

4. The expenses suffered by Vuitton thus far to prove the contempt aggregate \$538,991.12. Submitted herewith is the affidavit of Brian Dowd.¹ Mr. Dowd is a certified public accountant and serves as my firm's controller. Among his duties are supervision of the maintenance of my firm's books and records maintained in the ordinary course of our practice. In addition, Mr. Dowd is responsible for the maintenance of certain other books of account in respect of certain funds of Vuitton disbursed by us generally in connection with the enforcement of Vuitton's trademark rights throughout the United States.

5. I have asked Mr. Dowd to advise me of the total amount and breakdown of all expenses (including legal fees) incurred by Vuitton in connection with this contempt proceeding. As mentioned above, they total \$538,991.12 through May 31, 1984.

6. I will make Mr. Dowd available for deposition any day during the week of July 16, 1984, and at that time make all the relevant books and records available for inspection and copying.

7. Accordingly there being no disputed issue of fact, Vuitton's motion for summary judgment should be granted in all respects.

/s/ J. Joseph Bainton
J. JOSEPH BAINTON

[Affidavit Omitted in Printing]

¹ Mr. Dowd prepared this affidavit in draft before leaving for a two week vacation. It is therefore being served unexecuted with the representation that an executed copy will be filed with the Court prior to the hearing on this motion.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[Title Omitted in Printing]

AFFIDAVIT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

BRIAN DOWD, being duly sworn, deposes and says:

1. I am a certified public accountant and am employed by Reboul, MacMurray, Hewitt, Maynard & Kristol ("Reboul, MacMurray"), as the firm's controller. Before joining Reboul, MacMurray in June, 1983, I was employed by Peat, Marwick, Mitchell & Co. as an audit manager in their Private Business Advisory Services Group.

2. Among my duties are the supervision of the firm's accounting department. The accounting department is responsible for maintaining the firm's financial books and records in accordance with generally accepted professional practice. In addition, the accounting department is responsible for maintaining records relating to funds of Louis Vuitton S.A. ("Vuitton") which are disbursed to various persons (other than Reboul, MacMurray) who provide services relating to Vuitton's United States trademark enforcement program. Such persons include generally licensed private investigators, court stenographers, local counsel in states other than New York and California where Reboul, MacMurray is licensed to practice, and the like.

3. I have been asked to prepare this affidavit in order to explain the total cost to Vuitton of this contempt pro-

ceeding, including costs of investigation. This affidavit is therefore based upon my review of the firm's books and records. I understand that the firm has offered to make these books and records, together with the supporting documentation, available for inspection and copying during regular business hours upon reasonable notice. In addition to making the records available, I will make myself available to answer under oath any questions anyone may have about this topic.

4. The total cost to Vuitton of this contempt proceeding as of May 29, 1984 is \$538,991.12. Of that sum Vuitton has already paid \$365,466.37. The balance of \$173,524.75 represents fees and disbursements for the period from February 1, 1983 to May 29, 1984, for which Vuitton has been billed. The breakdown of those expenses are as follows:

Reboul, MacMurray, Hewitt, Maynard & Kristol (legal fees)	\$300,327.00
Kanner Security (investigative services (including certain services provided by Melvin Weinberg from February 1, 1983 to June 30, 1983)	\$ 54,766.60
Melvin Weinberg (review of tapes; correction of tran- scripts; other trial prepara- tion and attendance at trial)	\$ 17,792.58
Internal Affairs Investigative Services Inc. (certain inves- tigatory services in California; technical services in respect of preparing all post April 5, 1983 videotapes)	\$ 7,877.96
The Stonegate Agency (various investigatory services, including maintaining custody of evidence in Chemical Bank vault)	\$ 33,465.60
MPCS (rental of video and audio equipment for trial)	\$ 10,131.40

Ralph Fink & Associates (preparation of transcripts of video and audio tapes and preparation of deposition transcript of David Rochman)

\$ 11,622.30

Southern District Court Reporters preparation of trial transcript. (This sum is an estimate provided by court reporters in respect of unbilled transcription.)

\$ 1,732.40

Other disbursements paid by Reboul, MacMurray:

Legal Fees	\$ 3,029.94	
Sheriff's fees	500.00	
Secretarial overtime	8,976.09	
Copying	42,759.06	
Travel	3,304.94	
Telephone	2,031.60	
Word Processing	3,806.26	
Lexis	1,493.79	
Expenses incidental to night work	5,998.30	
Travel and hotel expense for investigators	13,305.38	
Other	16,069.92	
		<u>\$101,275.28</u>
		<u>\$538,991.12</u>

/s/ _____

BRIAN DOWD

[Affidavit Omitted in Printing]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[Title Omitted in Printing]

TRANSCRIPT OF PROCEEDING

February 27, 1985
3:37 p.m.

Before:

HON. CHARLES L. BRIEANT,

District Judge.

* * * *

[3] THE COURT: The court has two motions: One is a motion in the civil proceeding for reargument.

If the court has all of the papers on that, that will be treated as fully-submitted decisions.

Is there any additional paper to be received?

The court hears silence.

Also there is a motion on behalf of Mr. Cariste, and unless there is something further to be heard on that subject, I'll consider that at this time.

Mr. Craner.

MR. CRANER: Your Honor, my application is in the letter, and I wrote to you, and also Mr. Bainton has responded.

Very, very simply, your Honor, I don't think that the initial argument that we raised at the time we moved to dismiss and also the initial motions and also what I raise in my motion, post-trial motion—the fact that at the time the order to show cause was obtained, your Honor, there was no evidence that Mr. Cariste had knowledge of the fact that Mr. Klaymine had an injunction against him.

Mr. Bainton opposed the motion, and the only thing that he added was that Mr. Weinberg would testify about this, and also he talked about a conversation between Helfand and Askelund, in which Helfand, according to Mr. Bainton's affidavit, Helfand purportedly told Askelund that [4] Cariste knew about Klayminc's problems.

Your Honor, that just isn't true. We heard—we went through the trial. The whole sequence was that Helfand didn't know who Cariste is.

I spoke to Mr. Helfand today and I asked him, did you ever here of George Cariste before the order to show cause came down, and he said no.

We heard nothing from Askelund at the trial, no notes or anything to indicate that this purported conversation took place, which was the basis for the order to show cause, as to Mr. Bainton.

He talks about the fact that Cariste had manufactured counterfit goods. That is true, but that is not a crime.

He also stated, in opposing my original motion, that Mr. Weinberg was going to testify about this. Mr. Weinberg testified about a lot of things. He testified the fact that Cariste purportedly had agreed to sell a thousand bags a week or a month, whatever, it was, your Honor, but the one thing that Weinberg didn't say—and Weinberg's testimony regarding the Plaza conversation was not believed by the jury because they acquitted on that count.

But, in any event, Weinberg never said that, "In the conversation that I had with Cariste, Cariste said I knew all about Klayminc."

[5] Your Honor, the whole sequence, the whole pattern, of all these cases was for Weinberg to get these people involved and to make damaging statements. He didn't ask it, and Cariste never said he knew about it.

Cariste never told anyone about his knowledge.

There was no proof.

Now, the jury believed Rochman, and I am not going to at this point argue the jury shouldn't have believed

Rochman. That shouldn't matter because Rochman's testimony regarding Cariste became available one week prior to trial.

When the order to show cause was signed, Rochman was a defendant. Rochman never told Bainton, nor anyone who was part of the special prosecutor's office or involved with them, purportedly about Cariste's knowledge. All of this came after the fact because they had to have some testimony to sustain a verdict about knowledge.

Weinberg couldn't give it, Askelund couldn't give it, Helfand couldn't give it, no one could give it, except Rochman, after the fact, and Rochman didn't give it.

For the purpose of this motion, there was sufficient evidence, at the time of the trial, to convict Cariste. What I am saying, your Honor, is that this order to show cause should never have been signed, your Honor, I believe if we would have asked you to read the grand jury [6] minutes or to see some kind of evidence, if this would have gone in the usual indictment manner, I think your Honor would have been a lot more sympathetic to a motion to dismiss prior to trial.

As I said in our papers, we have got a show here. Here it is and here it is. What Mr. Bainton can't do is—and it's wrong and it's improper for him—to create his case after he gets the order to show cause signed.

Your Honor, I most respectfully urge you to reconsider the decision on our post-trial memorandum—post-trial motion, and for you to find George Cariste should be acquitted.

Thank you.

THE COURT: Mr. Craner, I respect your diligent and thoughtfull representation of your client.

I really think the points you raise are essentially merged to the jury verdict, and it is at this stage no different than if the grand jury had indicted solely on hearsay and later at trial the government developed adequate admissible evidence to convict him.

There are numerous cases, starting with Costello, saying that that is all right.

So I believe, although I certainly do respect the sincerity with which you have presented it, the motion should be, and it hereby is, denied.

[7] MR. CRANER: Thank you, your honor.

THE COURT: Mr. Weininger, is there any reason my sentence should not be imposed at this time?

MR. WEININGER: No, your Honor.

THE COURT: Mr. Klaymenc, is there any reason why sentence should not be imposed at this time?

THE DEFENDANT: No.

THE COURT: Mr. Cohen?

MR. COHEN: No, Judge.

THE COURT: Mr. Barry Klaymenc, is there any reason why sentence should not be imposed at this time?

THE DEFENDANT: No.

THE COURT: Mr. Comden?

MR. COMDEN: No, your Honor.

THE COURT: Mr. Gerald Young, is there any reason why sentence should not be imposed at this time?

THE DEFENDANT: No, your Honor.

THE COURT: I see. Very well.

Mr. Craner, is there any reason why sentence should not be imposed at this time?

MR. CRANER: No.

THE COURT: Mr. Cariste, is there any reason why sentence should not be imposed at this time?

THE DEFENDANT: No.

THE COURT: Mr. Matarazzo, is there any reason [8] why sentence should not be imposed at this time?

MR. MATARAZZO: No, your Honor.

THE COURT: Mr. Helfand, is there any reason why sentence should not be imposed at this time?

THE DEFENDANT: No, sir.

THE COURT: Mr. Weininger, you may be heard in your client's behalf and present any information in mitigation of sentence.

MR. WEININGER: Yes, your Honor.

May it please the court, prior to today's date, your Honor, I submitted to the court a letter enclosing several reports from Mr. Klayminc's physicians, as well as several hospital records, discharge summaries, and operative reports.

The reason this was submitted, your Honor, was to point out that despite Mr. Klayminc's apparent good health; that is, just by looking at him, one would get the impression he is in good health, and certainly there are claims on the tape he plays golf frequently.

Mr. Weinberg impressed him he was in good health. This simply does not represent the facts of Mr. Klayminc's present state.

In 1980, your Honor, Mr. Klayminc had a transient eschemic episode which, in lay terms, is an impending stroke or cerebral vascular catastrophe.

[9] In light of that, he was admitted for the performance of an angiography, which is injection of dye into the blood vessels in the brain, which is an extremely hazardous test, which is only performed in the presence of very serious medical conditions.

That test bore out the fact that Mr. Klayminc had developed arteriosclerosis of the carotid arteries leading to the brain; that is the left and right carotid arteries.

Mr. Klayminc was treated medically for four months and was given medication, to which he did not respond.

In August of that year he was admitted for a procedure, thromboendoarterioectomy, which is surgical removal of the plaque inside of these vessels.

Fortunately, with respect to the left carotid artery, the surgery was successful.

On the right carotid artery, surgery could not be performed and stenosis, or accumulation of plaque, still remains in that artery. Mr. Klayminc continues to be treated medically for that condition, but as the reports of Doctor Deutsch, and the third physician whose report I submitted, a Doctor Berg, indicate that this is a con-

dition which needs careful monitoring, close watch of diet, and is a condition which could lead to a stroke at any time, a [10] stroke which would—or condition which would require immediate medical attention.

As we would all know, with respect to a stroke, a matter of minutes, terms of proper medical care, could be critical.

If that were all that Mr. Klayminc suffered from, I think that would be enough, in terms of the precarious condition he is in at age 67. Although I stated that in my report, he corrected me he is 65.

In February of 1982 he suffered a myocardial infraction, which was documented not simply by the symptoms with which he presented at the hospital, but by changes in his cardiac enzymes, which were the enzymes released by the heart at the time of the heart attack.

He was hospitalized for two weeks at that time, and subsequent tests revealed the fact there was other necrotic, or dead, tissue in the heart, presumably from a previous silent heart attack.

Since that time, Mr. Klaymic has been seen on a continuing basis. He has been treated with medication, careful diet, efforts to reduce stress, all in an effort to avoid what Doctor Deutsch, a noted cardiologist, said is the possibility of bypass surgery in his heart.

He is described in these various reports as having generalized arteriosclerosis; that is, [11] arteriosclerosis, or hardening of the arteries, throughout the various parts of his body, the heart being one place and the carotid arteries being another.

In light of these two conditions, Mr. Klaymic—for Mr. Klaymic it is essential his diet be carefully monitored, that he lead a life that is as free from stress as possible, and that he be routinely checked for any medical emergency that might arise, both routinely and, as I say, for any emergency.

These are conditions which require immediate attention. Because of these conditions, your Honor, a sentence of

imprisonment for Mr. Klaymic, we submit, would be tantamount to a death sentence.

Imprisonment for Mr. Klaymenc would deprive him of the conditions that are necessary for the maintenance of his very existence; that is, proper diet, lack of stress, exercise, regular medical checkups and the availability of immediate medical care if there is any difficulty in his condition.

I don't mean to diminish the crime of criminal contempt, your Honor. Certainly whether it's a contempt of court by virtue of the sale of drugs or the commission of a violent crime, it is still a contempt of court.

But in this particular case, the act of contempt [12] was, although as I say, a serious crime, was the manufacture or contemplated manufacture of counterfeit handbags, which did not pose a real threat to the public, and while the disregarding of court orders is a serious matter and would be something—and is certainly something—that the court should address, to submit Mr. Klaymic to what we submit is tantamount to a death sentence for that underlying act is simply cruel and unusual and excessive punishment.

I am not saying I don't appreciate the dilemma the court is in, in so far as Mr. Klaymic has previously been placed on probation, and the instant offense was committed during that period.

I don't have an easy answer to that, but I can say that the sentence of imprisonment would be cruel and unusual under these circumstances.

Again, not to diminish the significance of the crime of criminal contempt, your Honor, but in mitigation, although Mr. Klaymenc had done this before, and the tapes do not reveal a great deal of arm twisting to do it again, this was a situation in which he was, in fact, approached.

He did not initiate it, and while the twisting of the arm was not that great, I firmly believe, your Honor, that had Mr. Weinberg not approached Mr. Klaymic, that

would have been the end of it and there would have been no [13] more counterfitting.

I would point out, in addition, that when Mr. Weinberg met Mr. Klaymic, he was at the low point. He was on the verge of personal bankruptcy. The business—the only business that he knew since immigrating here from Poland was that of the handbag business.

Because of the nature of the economy, the availability of cheap foreign labor, Mr. Klaymic was driven out of that business in New York, and driven out of what was once a lucrative business, and was now a dead business.

Here he was approached at the weakest point in his life, and he was—he fell prey to Mr. Weinberg's entreaties, not that this excuses Mr. Klaymic, but perhaps it offers some degree of explanation for why he did what he did.

I would also point out to the court that Mr. Klaymic has not led a life, contrary to what the probation report says, that is a successfull one from points of view of business and home life.

His life has had tragedies: the suicide death of his daughter; the financial ruin of his business, and Mr. Klaymic is not unfamiliar with the tragedy and with difficult circumstances. This is certainly an instant that took place during those difficult times.

I ask the court to keep these—to consider [14] these factors, your Honor, in imposing sentence on Mr. Klayminc, and I urge the court to impose a sentence that would not involve incarceration and what we would maintain is the hazzard to his life.

THE COURT: Mr. Sol Klayminc, do you wish to say anything only your behalf or wish to present information on mitigation?

THE DEFENDANT: I think my attorney just about said everything.

I am sorry for everything.

THE COURT: Mr. Cohen, do you wish to be heard on your client's behalf and present any information in mitigation of sentence?

MR. COHEN: Yes, your Honor.

I sent—had handed over a letter to the court this morning.

THE COURT: The court has your letter, and the court is not making any findings to the effect that your client committed perjury.

MR. COHEN: Thank you.

Judge, I'll be very brief.

I thought the background portion of the probation report was detailed complete. I have no additions.

I am sure your Honor is familiar with it. I [15] won't go through the emotional problems Mr. Barry Klaymanc has had in any detail whatsoever.

Let me point out, Judge, this is a case that, in effect, there was certainly no economic damage beyond the attorney fees and the costs put out by Sol McMurray. Louis Vuitton's products are not damaged in any way. Certainly Mr. Bainton has not shown that to be the case.

In addition, your Honor, the setting of this case is: (a) One in which Mr. Weinberg did approach first, which I think should be considered in mitigation;

and, (b), one in which I think all or most of the defendants indicated a concern about the court order, and indicated a sensitivity to it. There is at least some evidence from which you can infer—and, again, this is on mitigation; this is not on the guilt or innocence part at all—some evidence your Honor can infer there were entreaties that the conduct that was contemplated was not illegal.

Now, as I say, I think, that, therefore, the sentence can be mitigated on that ground.

Judge, I urge you to consider other alternatives than a jail sentence. I note that Barry Klaymanc has no prior record whatsoever. He is currently working. He is a college graduate. There is a whole range of possible alternatives to a jail sentence which would, on the one [16] hand, serve the court's interest and the public's interest in vindicating the conduct that occurred here, and

yet, on the other hand, not cause additional ruin to the lives of the people that are before you.

I have spent, as you might imagine, a great deal of time with my client since being assigned. I guess it goes back to June of '83 now, and I am personally aware of the costs that this whole process has taken on him and the effect that it has had on him personally and on his family.

In a very real sense, that is punishment.

Your Honor has, as I said, a whole range of alternative possibilities:

Community service is being used frequently, and in this kind of case, I think it would be perfectly appropriate to impose a sentence of community service;

A fine, for example, that could be paid off over a period of time would also be perfectly appropriate.

Both of those alternatives would permit Barry Klaymic to remain at liberty and to keep his life intact, and would also vindicate the courts and the public's interest in seeing that contempts don't occur because they would be constant reminders to the individual involved in the conduct that the conviction represents.

Judge, I also urge you to take into account sentences that have apparently been imposed on people who [17] were, in some broad sense, similarly situated.

The probation report that I read did not reflect Mr. Rochman's sentence, but I believe that the arrangement between him and Mr. Bainton indicated that if all went well, there would not be a recommendation of jail.

The report indicated that Mr. Pariseault, I believe, was given a six-months' suspended sentence, if my recollection serves me.

Judge, of those two people—in fact, both of those two people: Pariseault, being a lawyer, and Rochman being—as you might recall, were heavily involved in this, much more heavily than Barry Klaymic. Those sentences perhaps reflect the range that ought to be considered with respect to Barry Klaymic.

THE COURT: Both those cases are characterized by contrition and a modest amount of cooperation, if the court's recollection is correct.

MR. COHEN: I think that's a fair statement, Judge.

THE COURT: There is a difference.

MR. COHEN: No question about that, Judge, and I am not insensitive about that.

I think, though, into that balance must be put—and I don't think your Honor did the sentences, but I might be mistaken.

[18] THE COURT: Pariseault, I have.

Pariseault pleaded to slightly different factors. There were some extenuating factors in this case.

MR. COHEN: I am not saying they're innocent, by any means. I am sensitive to the court's concern, and the court may have given credit to some modest amount of cooperation and remorse, but I do think there were situations in both of those cases or circumstances that were more aggravated than at least what Barry was involved in in this case.

I am suggesting when you balance all that out, there are alternatives to a sentence of incarceration that I am suggesting would be quite appropriate.

Judge, I have nothing to add, except to request that if your Honor is or does impose a sentence of incarceration, I would like to be heard on the issue of bail pending appeal.

THE COURT: Since you are addressing the court, and since it would seem obvious a sentence of incarceration may have to be imposed on one or more defendants here, why don't you save time by discussing that at this point.

MR. COHEN: Now, 18 USC 4133 somewhat changes the standards that are to be applied in this situation. The language that concerned me a great deal was the language that indicated that there had to be a substantial [19] issue of law in fact, and there had to be a likelihood of reversal or order of new trial.

The other conditions are the ones involving a risk of nonappearance or risk of danger to the community.

I don't know how Mr. Bainton feels. I think it's quite clear there neither is a risk of nonappearance or risk of danger to the community.

MR. BAINTON: So stipulated, your Honor.

THE COURT: Thank you.

MR. COHEN: Thank you.

The other condition is that the appeal is not taken for the purposes of delay.

Now, your Honor, despite your Honor's lengthy opinions in this case, and I believe there were two, I think it would be fair to say that there are substantial issues of law in fact which exist in this case.

The real question—and I am not sure your Honor would disagree with that—the real question, it seems to me to be what do the words “likelihood of reversal” mean, and the answer to that—at least the answer that I've come up with, is a case entitled United States versus Miller.

THE COURT: In the Third Circuit?

MR. COHEN: Yes, your Honor.

Now, I confess that the reasoning of the court [20] seemed to me to be a hair convoluted, but the bottom line, it seems to me, makes sense.

THE COURT: Do you have the slip opinion?

MR. COHEN: Do I?

Your Honor, I have it.

THE COURT: The gist of that opinion is probably page ten of the slip, and that's another way of saying that if you would not be honor bound to file an Anders brief—and I don't think that would be the case here—in light of the substantial legal issues tendered to this court and ruled upon, the net result of which I am certain you differ in good faith, all you would have to do was state at least one of them would result in a dismissal or a new trial if ruled upon differently. That would bring you within the Third Circuit opinion.

This court is not familiar with any Second Circuit ruling at all on this point.

MR. COHEN: As far as I know, there is no such decision, your Honor.

THE COURT: I really see no reason why the court should not follow the Third Circuit opinion in Miller.

However, the act applies only if there is: First, a sentence of imprisonment; and, second, an appeal has been filed.

Now, nobody has to file an appeal for some [21] period of time, ten days, and it makes no sense the way it is drawn, and then I assume the court would be required to find which specific issues would be reasonable grounds.

MR. COHEN: Well, my reading of Miller, your Honor, suggestions that if your Honor is able to say that there is at least one issue that if ruled upon differently by the higher court, would result in a reversal or order of new trial, it need not—

THE COURT: There is another factor also, and that is that sentences on criminal contempts are in themselves reviewable on appeal, wholly a part from guilt or innocence, as you can recently see from the Gracias opinion in this circuit

MR. COHEN: That's correct, your Honor. I agree with your Honor that the way this section is drawn, it doesn't make sense.

If it makes any difference, I am certainly prepared to file a notice of appeal this afternoon, if you think that's a condition—

THE COURT: Well, that is what it would mean.

MR. COHEN: It's makes more sense to interpret it—I can state in perfect good faith we intend to file a notice of appeal and pursue it.

We haven't gone to the trouble we have gone to up to this point merely to harass your Honor.

[22] THE COURT: No body has ever suggested that.

MR. COHEN: I know that, Judge.

THE COURT: The draftsmanship on this important statute is really quite poor.

MR. COHEN: I agree, Judge.

THE COURT: Did I interrupt your presentation?

MR. COHEN: No, Judge. I think—and I'll be happy to respond if Mr. Bainton disagrees with this interpretation of Miller—I think Miller, although it doesn't take the control, suggestions strongly what the outcome on this fact pattern should be.

THE COURT: All right, sir.

Mr. Barry Klaymic, do you wish to say anything on your behalf or present any information in mitigation of sentence?

THE DEFENDANT: Yes, I would, your Honor.

I would just like to reiterate what my counsel has said as far as this entire ordeal taking quite a toll on my family, both myself and my parents, and this has been quite sever punishment in itself.

That's it.

THE COURT: All right.

Mr. Comden, would you like to be heard in your client's behalf or make any presentation to the court in mitigation of sentence?

[23] MR. COMDEN: Yes. Thank you, your Honor.

First of all, I would like to adress the probation report section on culpability.

I did not write a letter to the court, as did Mr. Cohen, but I do have some problems with the conclusion -that the Klaymincs and Mr. Young are the "most culpable of the defendants."

I think there are some clear distinctions between Mr. Young's participation in this matter and the participation of the Klaymincs.

First of all, while Mr. Young may have been a major factor in the Viutton office in the west back in the late '70s, by 1980, he was totally out of the Vuitton business, and he had no involvement with the Vuitton situation until after that time.

Whereas, the Klaymincs apparently continued to have involvement with these products after—well after that time.

While Mr. Young may have been a party to a consent decree in California, which I certainly think is an important factor in the court's decision, he has never been held in contempt.

I think that is a significant factor because when you have somebody who has already been before the court charged with contempt and held in contempt—

[24] THE COURT: You see, he is charged here as an aider and abettor of Klayminc's content.

MR. COMDEN: Exactly.

THE COURT: However, from the very facts relied on in the trial here, there is no question in my mind they would charge against him in California as a principal.

MR. COMDEN: Your Honor, I am not disputing that. What I am claiming is there is a distinction between being charged with contempt for the first time and already held in contempt, convicted of a prior contempt.

I think that is the distinction there.

THE COURT: I understand.

MR. COMDEN: I agree with your Honor, that it is a serious factor because the government could have elected to pursue Mr. Young on the contempt charge in California. It certainly would have been to Mr. Young's advantage to have—to have been held in California instead of having to have him come to New York on repeated periods of time; but for whatever reason, Mr. Bainton choose to bring the action here.

So I am not saying that that doesn't put him in a different category, but, by the same token, he has never been convicted of any criminal offense prior to this event.

Finally, I think we need to look at Mr. Young's involvement in this matter. Mr. Young was brought in by [25] Sol Klaymic, at his request and urging, and you

have heard Mr. Weininger go through the problems Mr. Klaymic has had over the last few years.

Well, these were the kind of urgings that were given to Mr. Young in order to get him to become involved in a business he had not been in for some period of time.

Secondly, his involvement in the whole scheme here was merely to try to bring the fabric in, to put Mr.—the operation, to supply the operation with fabric from a source that he had known in the Orient.

He was not going to be involved in the manufacture or distribution of the bags. He was not going to receive any profit from that. His only profit would be as a commission for getting the material, and as he said in the tape, he was not making a grand-theft score on this thing. He was doing it as a favor to Mr. Klaymic for two reasons:

First, because Mr. Klaymic was in desperate straights; and

Secondly, Mr. Klaymic had helped him out before in 1978 when there was some of Mr. Young's fabric, and Mr. Klaymic had not, you know, put the finger on Mr. Young at that time.

Those are very strong factors, and Mr. Young, as the court could see in the tapes and in the discussions [26] that were played before the court, with Mr. Klaymic and Mr. Weinberg, about how reluctant Mr. Young was to get involved in this thing, you know, that he was worried about it and he wanted to know what he was dealing with.

He was only doing it as a favor to him and he was nervous about it, which should have told Mr. Young not to go ahead with it, but he did it because of the constant urgings of Mr. Klaymic.

Secondly, what did he do once he did get involved?

He agreed to provide the fabric. Yet a week later, he called Mr. Weinberg and told him he changed his mind.

Now, maybe that doesn't constitute a defense in the action that was tried before the court, but it certainly is a factor that should be considered in mitigation, your Honor, because here is a guy who had doubts about it to begin with and reluctantly agreed and then changed his mind.

He never supplied even one yard of fabric in any of the bags that were talked about or supplied in this case.

Now, to the contrary, we have had Mr. Rochman, had Mr. Pariseault, we had Mr. Helfand and Mr. Cariste, who were actually dealing in the bags at the time this thing started or at some limited level.

[27] Mr. Young was out of the business until he was urged in to help supply the fabric because he had a particularly good source of fabric.

I am merely trying to indicate to the court that Mr. Young's culpability in this thing does not fall up to the same standards of some of the other defendants, and is certainly not any greater than some of the other defendants that have already pleaded guilty before this court.

Now, the court brought up a good point, these other individuals have gotten up before the court and shown some contrition.

What I would like to point out to the court is that Mr. Young, at a very early stage, was willing to cooperate and help out the prosecution, I mean in terms of what his source was, but his response to that is, "We are going to ask for 35 years in jail." That's what they wanted from the very beginning, was blood from Gerry Young.

THE COURT: It isn't they want blood. They want the court to vindicate its so frequently disobeyed orders by means of general and specific deterrents so this will not be regarded as a trivial matter in the future. That's what they want.

That is not a really unreasonable request.

MR. COMDEN: I understand that, but from Mr. Young specifically.

[28] THE COURT: That has nothing to do with it. The prosecutor doesn't set sentences.

MR. COMDEN: Of course not, your Honor.

THE COURT: If he had it, he could have shown contrition, and he didn't; and he certainly appeared callous and arrogant on the television set where I saw him.

MR. COMDEN: Your Honor, I do want to address that in a minute, but let me just finish this point.

Now, regarding this fact, Mr. Rochman pleaded guilty and showed contrition.

THE COURT: No more about Mr. Rochman. I have covered that already with Mr. Rochman and with you.

MR. COMDEN: All right.

Now, regarding Mr. Young's performance on the tape, I think that's really what it was, your Honor, a performance.

I have known Mr. Young for quite a long time. Mr. Bainton has known Mr. Young for a long time.

THE COURT: He was not aware of the fact he was on camera.

MR. COMDEN: That's correct. He was led to believe he was talking to a major figure in organized crime, and I think if the court looked at Mr. Rochman on the tape, saw the same tapes with respect to Mr. Rochman who was portraying himself as the kingpin, yet on the stand that [29] was all a lie.

What I am trying to indicate to the court is that the appearance on the tape was a performance for the purpose of Mr. Weinberg, who was believed at that time to be Mel West, some big Mafia chieftan, and this is not the Mr. Young I know, and this is not the Mr. Young Joe Bainton knows.

The court got to see Mr. Young in that one limited performance, and there was only one, where I would not contest the court's evaluation that it was an arrogant attempt to, you know, be smarter than the other guy; but by the same token, let's look at what Mr. Young did. He was involved in this think for a week.

He backed out, he called him. That was never presented in a fair manner in the court, but it did come up through the tapes, that he had withdrawn from the whole process, and that was before any of the others had withdrawn, your Honor, and I think that that is also important.

Now, I don't dispute in any way the court's concern its orders be carried out, and Mr. Young, of course, was not a party to this court's order. Certainly I don't think it's a reasonable assumption that a person is going to think about an order emanating from New York in terms of—

THE COURT: Please don't overdo it because he [30] was certainly in violation of the order of the Central District.

That's the way the order was against Mr. Young, wasn't it?

MR. COMDEN: That's correct, and I haven't disputed that, but I am talking about this particular court.

THE COURT: That is kind of a fine argument, he knew he was violating the order of a federal court in California and also aware he was aiding and abetting in violation of a federal court order in New York, that is an awfully-fine argument.

MR. COMDEN: Your Honor, the only reason I bring that up is to just point out, in terms of what this court should do, and I feel that if you look at Mr. Young's background, he has been a law abiding citizen. He has not been charged or convicted of any criminal offense.

He is 45 years old. He has three teenage children, your Honor.

His wife doesn't work.

What I am trying to ask the court and trying to present to the Court is there must be an alternative, on a first offense, to a period of incarceration for a man who has other than this offense, criminal offense, which—of course, he did not specifically intend any contempt for

this court or for the order he was accused and convicted of [31] violating.

I think that the prior counsel's suggestions regarding community service and/or fine would serve that purpose.

The last two years have been utter hell for Mr. Young. Yet if we look what he has done over the last two years, he has started and built up a new business that is completely legitimate, that does not involve any counterfeit merchandise. It's clearly pointed out in the probation report he is making a living off the business.

He is not getting rich. He is trying to pay down the huge debts he has from prior business failures.

He is providing a reasonable environment for his family, and I do not see that any purpose will be served by incarcerating Mr. Young, other than if the court says to make an example to others; and I believe that now there is a criminal statute that covers this, and so I don't believe in the necessity to incarcerate people on acts that occurred two years ago when there is now presently a statute under which these people are put on notice that what they're doing is a crime.

THE COURT: I think he was on notice, I really do think so, but I thank you for your presentation.

THE COURT: Mr. Young, do you wish to be heard personally on your behalf or say anything further in [32] mitigation?

THE DEFENDANT: Yes, your Honor.

All I would like to say is I am truly sorry for what happened.

The pain my family has incurred in the past two years, and the shame my children have had over this thing in the last two years, taught me a lesson that I'm sure it will never happen again, your Honor.

That's all I have. Thank you.

THE COURT: Mr. Craner, you may be heard in your client's behalf and present any information in mitigation of sentence.

MR. CRANER: Thank you, your Honor.

Your Honor, you have before you the complete probation report on Mr. Cariste. My only difficulty with that report is that it seems to indicate that Mr. Cariste was convicted by the jury of all three counts against him.

If your Honor recalls, the jury only convicted Mr. Cariste of selling 25 bags and cutting 75 other bags.

He was acquitted for allegedly offering to sell and provide a thousand bags a month. I would just like to point that out to the court and I so indicated at the time I had an opportunity to read the probation report.

The probation report indicates that Mr. Cariste has never been in trouble before in his whole life. He has [33] worked. He has brought up his family. He's, in effect, been a pretty decent and regular citizen.

The probation report also indicated that there is little likelihood that Mr. Cariste will ever commit a crime again.

Mr. Cariste has been convicted of the 25 and 75 bags. He has never been in any judicial proceeding, civil or otherwise, regarding the counterfitting of Vuitton or any other bags.

I would say, your Honor, at the very most, that even as the jury believed he had knowledge of Mr. Klayminc's injunction, that he still is a layman; and if he has been convicted of it, he has been convicted.

I would say, your Honor, in terms of being venal, in terms of having the intent to commit a crime, I don't think it's really there.

Mr. Cariste's connection with this matter is at most supervision. He did go out in the market and buy 25 bags and sell them to Sol Klaymic.

He did cut 75 bags.

He wasn't part of the scheme, he wasn't made a partner, and I think that is all of his contribution to this.

I think it's minimal. I think that the reasons for him being brought into this, in terms of actual knowing [34]

what he is doing is wrong, is certainly very, very minimal.

The probation report also states, your Honor, Mr. Cariste has also suffered some very, very substantial major medical conditions.

He has been—he went through—he had cancer. A large part of his intestines and other organs were removed. He is still under the care of a doctor.

He is pretty much retired. He can't work. He is not in the Vuitton business. He hasn't been since prior to the order to show cause being issued.

Your Honor, I think because of what Mr. Cariste has been convicted of doing—and we have to deal with that fact—the fact that his record is good, the fact that his association and connection with this matter is minimal, and supervision, the fact that he did not have a knowledge that he himself was under any restraint—and if he has been convicted of aiding and abetting, I think he is certainly a very small character in the scheme that is being unfurled and which is the subject of the order to show cause.

Your Honor, I think it would be appropriate, under all these conditions, that the court be merciful to Mr. Cariste. He knows he has done wrong. He will never do it again, and I think that in order for the punishment to fit the crime, that there be a noncustodial sentence [35] imposed upon Mr. Cariste.

Thank you very much, sir.

THE COURT: All right, sir.

Mr. Cariste, you may be heard in your behalf if you wish to be heard in mitigation of sentence.

THE DEFENDANT: I would like to tell the court I am truly sorry for what has happened, and you can be sure this will never happen again.

Thank you.

THE COURT: Mr. Matarazzo, you may now be heard on behalf of your client, Mr. Helfand.

MR. MATARAZZO: Thank you, your Honor.

If your Honor please, I know Mr. Helfand about 20 years. I have never thought about him as a law breaker.

Mr. Helfand was secure in his tiny little cubbyhole of an office in the backwater of Fort Lauderdale, Florida, when along came the kind of the con men in America, and took him on along a nefarious journey.

This man was capable of fooling senators.

THE COURT: Only crooked senators.

MR. MATARAZZO: Thank you, your Honor.

THE COURT: It's true. They found one person who wouldn't take it, if you're talking about the so-called Abscam sting. I assume you are.

They found a Congressman who said he was [36] desperately in need of money, but he wouldn't take it.

MR. MATARAZZO: Well, now that I have him off on the wrong foot, let's try the right foot.

THE COURT: All right, sir.

MR. MATARAZZO: Mr. Helfand at the time did not manufacture handbags, never had, was not a party to any injunction on these companies or any companies of this country.

He became involved in something that he never did understand until he was served with an order to show cause, and I dare say to this court that today half the bar in this country does not know the penalties for criminal contempt of a federal judiciary. They're disastrous.

To impute that knowledge to a layman is asking a little much; but, at any rate, this case has destroyed Mr. Helfand. His business is a shambles.

The probation report will show this man suffered a heart attack.

He also served in the Great War as a sergeant for over four years. He is married; lives in Florida.

If your Honor please, I would ask the court to realize one thing:

In looking over the probation report, I don't know who wrote it. I thought it was the probation officer, but

I have been led to believe that part of the evaluation [37] may have been written by Mr. Bainton.

THE COURT: The evaluation is never written by anybody except the probation officer.

However, the so-called government's version, or the preliminary part of it, does receive input from the prosecutor. That is the standard practice in the district, as I understand.

The officer looks at the papers in the case and does get information. In fact, it says so on page 5 of the preamble.

I happen to have Mr. Young's report in my hand, but I am sure your client's is the same. It's here on the bench.

MR. MATARAZZO: What I was getting to was the evaluation in my client's report.

If my memory serves me, your Honor, it says Mr. Helfand was the least culpable of all the defendants.

Now, your Honor, I only ask, nay, I beg this court, to temper justice with mercy.

This man has never been given a chance at, or in probation. This is his first bite of the apple.

If your Honor please, this man spent four years of his life defending the laws of this country. I only ask that the laws of this country are not turned into a scourge to destroy him, because he is close to being destroyed now.

[38] He made no money. He didn't make a penny out of this thing. In fact, he is financially independent.

He has suffered a great deal. He is an ill man.

What can anyone gain by putting him in a detention home?

He is an old man. Without him, by the way, there would have been no United States against all these defendants. He was a perfect pawn for Mr. Weinberg. He is a fool, Judge.

I ask you not to punish him any more. It will destroy him.

I thank you for your courtesy, your Honor.

THE COURT: All right, sir.

Mr. Helfand, do you wish to be heard in your behalf or give any further information in mitigation of sentence.

THE DEFENDANT: The only thing I would like to say, in addition to what my counsel has said, your Honor, I am sorry for what has transpired, and it will never happen again.

THE COURT: All right, sir.

Does the special prosecutor have any comments or recommendations?

MR. BAINTON: Your Honor, I have about three things to say, and I would like to respond on Mr. Conen's [39] remarks about the Bail Reform Act:

One, on behalf of Attorney General Meese, whos interests I am supposed to represent, I would like to object to Mr. Weinberg's unkind remarks about the federal prison system. I think your Honor knows better than I do they are, on balance, untrue;

Two, I would like to reaffirm our view on general deterrence. I can't express it any I better, and defer to the courts;

Three, there is a complete absence of contrition. We still don't know who the manufacturer was in Japan.

I would like to correct Mr. Comden's remark with respect to Mr. Young. If your Honor reads the Ninth Circuit's opinion in that case, you will see that while that case was on appeal, Mr. Young was charged with criminal contempt for violating a similar order of the Ninth Circuit, which in substance restored the preliminary injunction of the Central District.

That case was never tried. He was never convicted of that charge. As the court is aware, the case settled.

With respect to my knowledge of Mr. Young, I have only known him in the courthouse.

There has been no prosecution in California because it seemed to us a complete waste of time to try [40] the same case in two courthouses.

We think, as the court has indicated, it's appropriate that you take Mr. Young's contempt of Judge Reale's order into account when you impose sentence in these proceedings.

Finally, in respect to Mr. Helfand, but for Mayor Erichetti, there would be no Abscam. But for Mr. Helfand, there would have been no "bagscam".

Whether that makes him a pawn or chief architect is a matter apparently Mr. Matarazzo and I disagree.

THE COURT: You don't claim he is the chief architect, do you?

MR. WEININGER: He stood there—but for Nate Helfand, we never would have found Sol Klaymine; but for Helfand, we never would have known Rochman existed; but for Helfand, we never would have known Pariseault existed.

THE COURT: He is not the most culpable of the group.

MR. BAINTON: I didn't say that. It doesn't necessarily make him a pawn, either.

THE COURT: All right.

The court makes the following general observations for the purpose of sentence: To the extent any defendant has more than one count, the court regards them as matters proper for concurrent consideration and [41] that the quality of the totality of the act is what we are concerned with here. If it's broken up into separated specifications, that adds very little.

The court instructs each of the defendants that you have an absolute right to appeal from a final judgments of conviction about to be heard in your case to the Court of Appeals of the Second Circuit and that appeal can be taken within ten days by filing a notice of appeal.

If any of you are indigent, the court will allow you to proceed without payment of fees, and counsel will be appointed for you by the Court of Appeals.

Furthermore, in that appeal, besides raising any issues as to guilt or innocence, or raising any issues as to any of the proceedings below, which may affect a substantial right, you also have a right to review, on appeal, the sentence.

Do each of you understand your right to appeal?

MR. COHEN: I can explain it to him.

MR. WEININGER: Mr. Klayminc does.

MR. COMDEN: Yes, your Honor.

MR. CRANER: The same with Mr. Cariste.

MR. MATARAZZO: The same with Mr. Helfand.

THE COURT: Does anyone want the court to order that you proceed in forma pauperis?

[42] MR. COHEN: Your Honor, I am technically assigned to Barry Klaymic.

THE COURT: You want such an order?

MR. COHEN: Yes.

THE COURT: So ordered.

MR. WEININGER: The same for Mr. Klayminc, your Honor.

THE COURT: You are assigned counsel?

MR. WEININGER: No, but in discussing Mr. Klayminc's financial condition your Honor, I think this may be appropriate.

THE COURT: The court believes it is appropriate and it is so ordered in the case for Mr. Sole Klaymic.

You, Mr. Weininger, should file a notice.

MR. WEININGER: Yes, your Honor, I intend to.

THE COURT: You will have to apply in the Court of Appeals if you want to be relieved because they won't pay unless you are on the panel.

Do you understand that?

MR. WEININGER: Yes.

THE COURT: Anyone else who has a problem?

MR. MATARAZZO: Yes, your Honor.

On Mr. Helfand's behalf, I will file the notice, but he can't possibly afford the appeal.

THE COURT: He may proceed in forma pauperis, [43] but you have to apply to the Court of Appeals if you don't wish to do it gratis.

Mr. Bainton, if you want to say anything about the legal issues involved in Section 3143, you probably could do that at this time because that will be easier for the court.

MR. BAINTON: I am sorry, sir. I can't hear you.

THE COURT: If you want to talk about Section 3143 of the Comprehensive Crime Control Act, it would be easier for the court if do you so now.

Mr. Cohen has already been heard on the point, and I assume the other defendants are adopting Mr. Cohen's argument.

MR. BAINTON: Your Honor is aware of the position I have taken in connection with another case, entitled *United States ex rel. Vuitton against Matthias*, which was heard before the United States Court of Appeals for the Second Circuit, I believe, in December, around either before or after Christmas.

Your Honor, what I said in that case I say here. There is hardly an issue that goes to the nuts and bolts operation of the criminal justice system more than release pending appeal.

I think it is very inappropriate for me to express such a view in this circuit where Mr. Giuliani has [44] declined to do so.

I have read the Third Circuit slip opinion. I think Mr. Cohen's characterization of it is accurate.

I don't know whether the court's rulings in this case, in light of the Second Circuit's case in *Matthias*, viewed is substantial. To me it's a close question. It can go either way. I express no opinion, your Honor, one way or the other.

THE COURT: All right. Thank you.

The court notes that the Matarazzo I as case, to which reference has made, has no bearing whatever because Matthias was before the court on a plea of guilty, and the only issue was the reasonableness or appropriateness of the sentence, which was appealable.

Accordingly, the issues raised here concerning bail pending appeal do not apply, are not anywhere similar to the issues raised in the Matthias case.

The court believes generally that the decision of the Third Circuit in United States against Stanton Miller, filed January 18, 1985, is essentially correct, in that the defendant now has the burden of proving, if he seeks bail pending appeal, the satisfaction of the criteria established under the Act; and following such submission by the defendants, the court must find, in order to permit a defendant to appeal:

[45] First, the defendant is not likely to flee or pose danger of the safety of any other person or the community if released;

Second the appeal is not for the purpose of delay;

Third that the appeal raises a substantial question of law or fact;

And, four, that if that substantial question is determined favorably to the defendant on appeal, that decision is likely to result in a reversal or an order for a new trial of all the courts upon which the sentence has been imposed.

That's quoting substantially from the Miller opinion.

The court believes that Congress could not have intended the literal meaning of the language in Subparagraph 2 of Section 3143 (b) of the Comprehensive Crime Control Act of 1984, because those words, "The appeal raises a substantial question of law or fact likely to result in reversal or an order for a new trial."

If it were taken literally, it would mean that a trial judge would be under a moral and legal duty to order a new trial himself. Indeed, this court would do so if the court were convinced that a substantial question

likely to result in reversal or a new trial existed in the record [46] in the case of any of these defendants.

So, in short, if the court believed that the appeal would be likely to result in reversal, then the district court would be aware of adequate grounds under Rule 33 to order a new trial at least, and would be compelled to do so, so I believe the correct resolution of this is as suggested by Judge Sloviter, writing for the Third Circuit panel, that Congress could not have intended literally, and the district judge could grant bail only if he finds that his own rulings are likely to be reversed.

The legislative history of the Bail Reform Act makes it clear that the purpose of the act is merely to reverse the former presumption which was in favor of bail, but not to deny bail entirely to persons who have legitimate grounds for appeal, even if the court regards those grounds as unfounded.

The Court of Appeals in the Third Circuit said the following, and the court finds this language quite appropriate: "We are unwilling to attribute to Congress the cynicism that would underlie the provision were it to be read as requiring the district court to determine the likelihood of its own error. The district court who, on reflection—the district judge who, on reflection, concludes that he or she erred, may rectify that error when ruling on post-trial motions. Judges do not knowingly [47] leave substantial errors uncorrected or deliberately misconstrued.

"Thus it would have been capricious of Congress to have conditioned bail only on the willingness of a trial judge to certify his or her own error.

"For similar reason, the phrase 'Likely to result in a reversal,' or 'An order for new trial', cannot reasonably be construed to require the district court to predict the probability of reversal. The federal courts are not to be put in the position of bookmakers, who trade on the probability of ultimate outcome."

"Instead, that language must be read as going to the significance of the substantial issue as to the ultimate disposition of the appeal. A question of law or fact may be substantial, but nonetheless, in circumstances of a particular case, be considered harmless, to have no prejudicial effect or to have been insufficiently preserved.

"A court may find that reversal or a new trial is likely only if it concludes that the question is so integral to the merits of the conviction on which the defendant is to be imprisoned that a contrary appellate holding is likely to require reversal of the conviction or a new trial."

That's the end of the quotation of the Third Circuit. [48] Furthermore, the court can rely on the totality of the record here, including the post-verdict motions and this court's prior decisions and opinions with respect thereto.

Insofar as entering into into the position of a bookmaker, any district judge in this particular circuit who tried to be a bookmaker would be condemned to starvation.

Be that as it may, while I don't endorse some of the relatively new theories, particularly the contention of outrageous government conduct, violative of Constitutional due process, which has been tendered here, there is no absolutely final appellate decision in this circuit; and this theory, in defendants' other contentions, fully set forth in their post-verdict motions, do, taken as a whole, constitute sufficiently substantial questions of mixed facts of law to which various authoritative precedents attach, to varying degrees of significance, and so I believe they would meet the Third Circuit criteria as to each one of them.

The court will now consider generally the issue of sentence. The maximum sentence for criminal contempt in this circuit has now been fixed at 5 years, in light of the Gracias decision recently handed down, which is still in slip opinions.

[49] The new statute making this conduct a federal felony, without regard to the prior existence of an injunction, likewise carries a 5 year maximum penalty.

The parole guidelines for each defendant presently before the court as applied would result in the service of two thirds of the sentence imposed if the sentence exceeds one year to a maximum of 20 months, which happens to be one third of the maximum of 5 years.

The main purpose of sentence here is to sustain the rights of trademark holders to require obedience to this and other orders of a court of like nature previously made and to be made in the future, to vindicate the right of society and vindicate the rights of the holder of a valuable property, and also pertain to the public purposes of general and specific deterrents.

The court begins its consideration with Mr. Sole Klaymic. Mr. Sol Klaymic is regarded by the court as a principal manufacturer here with respect to a crime committed while on probation.

The court finds and concludes that the health reports submitted do not militate against a sentence of imprisonment in the context of the modern federal prison system, and that applies to each defendant making a health claim here, even if those reports are accepted at face value.
[50] I caution each participant that if their health condition changes materially pending appeal, he may advise the court.

The court is certain that anybody with a health problem today receives adequate care in the federal system, and that this argument that the term of imprisonment is tantamount to a death sentence is just so much cant that won't stand up in the light of day.

The court regards Mr. Klaymic as being the principal malefactor. Mr. Klaymic is sentenced to a subsequent term of imprisonment 5 years concurrent on all the counts.

Mr. Gerald Young is regarded as the next most culpable. He showed a callous and depraved attitude towards

the victim of the crime and towards his duties. He was directly under an injunction in California at the time.

The court assumes there will be no prosecution out there for anything that he did which is covered in his dealings with Weinberg.

He was a principal factor in the plan because he was the source of the fabric. It is still true the source of the fabric is unknown and the fabric was apparently so profitable they were able to destroy the dies or printing machinery after the design had been presented.

As the fabric supplier, he is somewhat like the [51] sugarman in the old fashioned bootlegging cases. Without the sugarman, you can't have distilling operation.

Mr. Young has a prior history of ripping off Vuitton. As to him, the court must vindicate the rights of society and also the direct victim, and it is true he did change his mind and appeared to withdraw from the matter.

Mr. Young is committed to the custody of the Attorney General for a term of two and a half years.

Barry Klaymic is regarded by the court as having a lesser culpability and a victim, in part, of his loyalty and faith to his own father, and he has no prior record.

However, it's serious, and the court and society has to send a message in his case, too, and Mr. Barry Klaymic is sentenced to the custody of the Attorney General for term of nine months, concurrent.

Mr. Helfand is less culpable. However, he engaged in a crime motivated by greed. The court is cognizant of lack of any prior wrongdoing, and his honorable discharge and various other factors in his favor.

The court sentences Mr. Helfand to custody of the Attorney General for a term of six months.

Mr. Cariste is less culpable than the other participants, with the possible exception of Helfand and Barry Klaymic. The court's cognizant of his health problems. The same things are said as to him applies [52] likewise to the same as Sol Klaymic. Mr. Cariste is sentenced to the

custody of the Attorney General for a term of nine months.

Each of the defendants is continued on his bail pending appeal, the court finding, as indicated earlier, that each of you come within the statute and have shown that you're not likely to flee and that you have appeals which fit the Third Circuit requirements.

The court will be in recess.

(Time noted: 4:44 p.m.)

SUPREME COURT OF THE UNITED STATES

No. 85-1329

GERALD J. YOUNG, GEORGE CARISTE, SOL N. KLAYMINC
and NATHAN HELFAND, PETITIONERS

v.

UNITED STATES, EX CEL. VUITTON ET FILS S.A., ET AL.

ORDER ALLOWING CERTIORARI

Filed June 23, 1986

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted. This case is consolidated with 85-6207, *Barry Dean Klayminc, v. United States ex rel. Vuitton et Fils S.A., Louis Vuitton S.A.*, and a total of one hour is allotted for oral argument.

SUPREME COURT OF THE UNITED STATES

No. 85-6207

BARRY DEAN KLAYMINC, PETITIONER

v.

UNITED STATES EX REL. VUITTON ET FILS S.A.,
LOUIS VUITTON S.A.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ON CONSIDERATION of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. This case is consolidated with 85-1329, *Gerald J. Young, George Cariste, Sol N. Klayminc and Nathan Helfand v. United States, ex rel. Vuitton et Fils S.A., et al.* and a total of one hour is allotted for oral argument.

June 23, 1986

